United States Court of Appeals

for the Second Circuit

APPENDIX

76-7180

B

United States Court of Appeals

FOR THE SECOND CIRCUIT

TRAMP SHIPPING CO., INC.,

Plaintiff-Appellee,

—against—

GOTAAS LARSEN A.S., SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD.,

Defendants-Appellees,

and

—against—

EMERALD SHIPPING CORP. (LIBERIA),

Defendant-Intervenor-Appellee,

and

—against—

MARDORF PEACH & CO. LTD.,

Defendant-Appellant.

APPEAL FROM UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES COURT OF APPEALS
FILED
JUL 26 1976
DANIEL FUSARO, CLERK

APPENDIX

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC.,

Plaintiff,

-against-

GOTAAS-LARSEN A/S, EMERALD SHIPPING CORPORATION, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES LTD., MARDORF PEACH LTD.,

Defendants.

75 Civ. 1549 HFW
RELEVANT
DOCKET ENTRIES

Date	Proceedings
3-27-75	Filed complaint and issued summons
3-31-75	Issued process of Maritime Attachment and Garnishment re defendant Parabola Shipping UK Ltd. -- attach Himoff Maritime Enterprises Ltd.
3-31-75	Issued Show Cause summons why intangible property should not be paid into court (re deft. Parabola Shipping UK Ltd.) for above Attachment of Himoff - ret. 4-22-75
3-31-75	Issued process of Maritime Attachment and Garnishment re deft. Mardoff Peach Ltd. attach Himoff Maritime Enterprises, Ltd.
3-31-75	Issued Show Cause summons why intangible property should not be paid into court (re deft. Mardoff Peach Ltd.) for above Attachment of Himoff - ret. 4-22-75.
4-07-75	Filed Process of Maritime Attachment and Garnishment in re deft. Mardoff Peach Ltd., - attach intangible property of Himoff Maritime Enterprises, Ltd. -- and Marshals return - served: Himoff Maritime Enterprises, Ltd. by Don Bilchi on 4-2-75

Docket Entries

4-07-75	Filed Summons to show cause re deft. Parabola Shipping UK Ltd., - and Marshals return served: Himoff Maritime Enterprises by Don Bilchi on 4-2-75
5-08-75	Filed letter from Himoff Maritime Enterprises Ltd. to US Marshal dated 4-29-75 that Himoff at the time of service of process of Maritime Attachment held no goods chattels, etc. of deft. Mardoff Peach, Ltd.
5-23-75	Filed ANSWER of defts' Himoff & Parabola to claim-VBRM&Z
5-23-75	Filed ANSWER of defts' Himoff & Parabola to cross-claim of deft. Gotaas-Larsen A/S as against Himoff Maritime Enterprises, Ltd.-VBRM&Z
5-23-75	Filed ANSWER of defts' Himoff & Parabola to cross-claim of deft. Gotaas-Larsen A/S as against Parabola Shipping UK Ltd. VBRM&Z
5-28-75	Filed affirmation and order appointing person to serve process. - Clerk.
7-01-75	Filed memorandum of law by pltf. in support of motion for consolidation of arbitration.
7-01-75	Filed pltf's affdvt. and notice of motion to direct defendants to proceed to a consolidated arbitration of all claims - ret. 7-10-75
7-08-75	Filed deft. Gotaas-Larsen's affdvt. in response to pltf's motion for consolidated arbitration. (also on behalf of Emerald Shipping Corp.)
7-08-75	Filed deft. Gotaas-Larsen's memorandum in response to pltf's motion for consolidated arbitration (also on behalf of Emerald Shipping Corp.)
7-10-75	Filed memorandum on behalf of Parabola Shipping UK, Ltd. and Himoff Maritime Enterprises, Ltd. in response to pltf's motion for consolidated arbitration.
7-10-75	Filed by defendants Parabola Shipping UK Ltd. and Himoff Maritime Enterprises, Ltd. - affdvt. in opposition to pltfs motion for consolidated arbitration and in support of defts motion for discovery.

Docket Entries

7-30-75	Filed by deft. Mardorf Peach - affdvt. and notice of motion to dismiss cross-claim for lack of jurisdiction. - ret. 8-8-75.
7-30-75	Filed deft. Mardorf Peach's memorandum in support of motion to dismiss cross-claim.
8-05-75	Filed defts' (Parabola Shipping and Himoff Maritime Enterprises) affdvt. of James F. Campise in opposition to motion of Mardorf Peach Ltd.
8-05-75	Filed defts' (Parabola Shipping and Himoff Maritime Enterprises) memorandum of law in opposition to deft. Mardorf Peach & Co. motion to dismiss the cross-claim of Himoff and Parabola.
8-05-75	Filed deft. (Gotaas-Larsen A/S) affdvt. of Richard L. Jarashaw in response to deft. Mardorf Peach & Co., Ltd.'s motion.
8-05-75	Filed deft. (Gotaas-Larsen A/S and Emerald Shipping Corp.) Memorandum on behalf of defts in response to deft. Mardorf's motion
8-05-75	Filed certificate of mailing of amended complaint and summons to: Mardoff Peach & Co., Ltd. 52 Mark Lane London EC3R 7Pc, United Kingdom - reg. Mail #241895. 8-19-75 return receipt received and attached hereto.
8-05-75	Filed certificate of mailing of summons and complaint to: Mardorf Peach & Co., Ltd. 52 Mark Lane London EC 3 R 7PC --reg. mail #241897 8-20-75 return receipt received and attached hereto.
8-6-75	Filed stip. and order ext. deft. Mardoff Peach Ltd.'s time to reply to cross-claim to 7-28-75 -- Werker, J.
8-07-75	Filed by deft. Mardorf Peach & Co., Ltd. affdvt. of Lawrence G. Cohen in reply to defendant, Himoff Maritime Enterprises, Ltd. and Parabola Shipping UK Ltd.'s affdvt. in opposition to motion of Mardorf to dismiss cross-claim.

Docket Entries

8-07-75	Filed deft. Mardorf's memorandum of law in reply to cross-claimants memorandum in opposition to deft. Mardorf's motion to dismiss cross-claim.
8-06-75	Filed Opinion #42929 that the action is stayed pending arbitration. Submit order accordingly. So ordered. - Werker, J. m/n
8-15-75	HEARING begun before Werker, J. and concluded-re: motion to dismiss cross-claim against deft. Mardorf Peach - motion denied.
8-19-75	Filed memo endorsed on motion dated July 30, 1975. Motion to dismiss is denied. Motion to vacate service is moot due to service FRCP 4(e). So Ordered - Werker, J m/n
8-28-75	Filed deft. (MARDORF PEACH LTD.) affdvt. and notice of motion for an order vacating the attempted service of the "additional summons" and"cross-claims" of defts, (Himoff and Parabola) etc. as indicated, ret on. Sept. 22, at 10:00 a.m.
8-28-75	Filed deft. (MARDORF PEACH LTD.) memorandum of law in support of motion to vacate attempted service of the cross-claim by Himoff and Parabola.
9-04-75	Filed memorandum of law on behalf of Mardorf Peach & Co., Ltd., in opposition to pltf's motion for consolidated arbitration.
9-04-75	Filed affdvt. on behalf of deft. Mardorf in opposition to pltf's motion for consolidated arbitration.
9-05-75	Filed affdvt. and order appointing individual to serve process (add, summons and complaint) on defts. Mardorf Peach Ltd. - CLERK.
9-15-75	Filed memorandum on behalf of Larsen A/S and Emerald Shipping Corp. in reply to the memorandum of Mardorf Peach & Co., Ltd. in opposition to pltfs motion for consolidated arbitration.
9-15-75	Filed memorandum on behalf of Gotaas-Larsen A/S and Emerald Shipping Corp. in opposition to

Docket Entries

	the motion of Mardorf Peach & Co., Ltd. for an order vacating service of process.
9-15-75	Filed by defts Himoff and Parabola affdvt. of James F. Campise in response to the motion of deft. Mardorf
9-19-75	Filed transcript of record of proceedings dated Aug. 15, 1975
9-22-75	HEARING begun and concluded -- Decision reserved
10-17-75	Filed ----affdvt. of service of summons, complaint, cross-claim - served: Mardorf Peach Ltd. at 52 Mark Lane, London, England on 10-9-75
10-21-75	Filed MEMORANDUM-DECISION...The Court adheres to its original decision dated August 8, 1975. In the interest of judicial and arbitrational economy, the prevention of possible inconsistent results and the minimization of time and expense ts the parties, the court in its discretion orders the consolidated arbitration, etc. It is directed that a new proposed order be submitted in compliance with this memorandum providing for the nomination of the arbitrators So ordered.--Werker, J.: m/n #43272
11-19-75	Filed deft. Mardorf Peach & Co., Ltd. notice of precautionary appeal from "So Ordered" memorandum decision filed October 21, 1975 which directs the said indicated. Mailed notices to Vincent, Berg, Russo, Marcigliano & Zawacki; Haight, Gardner, Poor & Havens; Poles, Tublin, Patestides & Stratakis; & Zock, Petrie, Reid, Curtin & Byrnes.
12-29-75	Filed TRANSCRIPT OF RECORD OF PROCEEDINGS dated 9-22-75.
12-30-75	Filed pltf's affdvt. and notice of motion for an order directing all parties to proceed to arbitration - ret. 1-19-76
12-30-75	Filed pltf's memorandum in support of above motion.
01-14-76	Filed memorandum of law on behalf of defts Gotaas-Larsen A/S and Emerald Shipping Corp.

Docket Entries

	in response to pltf's order.
01-14-76	Filed on behalf of defts Gotaas-Larsen A/S and Emerald Shipping Corp.'s affdvt. of Charles S. Haight, Jr. in response to pltf's motion.
02-09-76	Filed deft. Sanko's affdvt. of Philip J. Curtin in reply to motion of plaintiff.
02-09-76	Filed by defts Parabola and Himoff, affdvt.of James F. Campise in opposition to pltfs motion.
02-10-76	Filed by defts Gotaas-Larsen A/S and Emerald, affdvt of Charles S. Haight, Jr. in response to deft. Mardorf Peach's opposition to pltf's motion.
03-09-76	Filed order that the plaintiff and all defendants proceed to arbitration; that said parties proceed to choose a panel of 3 arbitrators. Ordered that action is stayed pending arbitration. Ordered that action be placed on the suspense calendar of this court.Werker, J.
04-06-76	Filed by deft. Mardorf affdvt. of Lawrence G. Cohen in opposition to pltfs motion.
04-06-76	Filed memorandum of law on behalf of Mardorf in opposition to pltf motion.
04-07-76	Filed by deft. Mardorf Peach & Co., Ltd., notice of appeal to the USCA for the 2nd Circuit from so much of order of 3-9-76 as directs Mardorf to participate in a consolidated arbitration with the plaintiff, etc. -- copies mailed Attorneys of record listed herein.
04-26-76	Filed transcript of record of proceedings dated 2-23-76

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JUDGE WERKER

75 CIV. 1549

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

TRAMP SHIPPING CO., INC.,

Plaintiff,

-against-

COMPLAINT

GOTTAAS-LARSEN A.S., SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH LTD.,

Defendants.

----------X

Plaintiff, TRAMP SHIPPING CO., INC., by its attorneys POLES, TUBLIN, PATESTIDES & STRATAKIS, for its complaint against GOTTAAS LARSEN A.S., SANKO STEAMSHIP CO., LTD. (hereinafter SANKO) PARABOLA SHIPPING U.K. LTD., (hereinafter PARABOLA), HIMOFF MARITIME ENTERPRISES, (hereinafter HIMOFF), and MARDOFF PEACH LTD., (hereinafter MARDOFF PEACH), alleges on information and belief as follows:

1. This is a case of admiralty and maritime jurisdiction within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure, as will hereinafter appear.

2. Plaintiff is now, and at all relevant times was a corporation duly organized and existing under the laws of the Republic of Liberia, and is now and was at all relevant times the owner of the Greek Motor vessel, AGIA ERINI II, (hereinafter the vessel).

3. Defendant, GOTAAS LARSEN A.S. now and at all relevant times the charterer of the vessel under a charter party agreement concluded in the City of New York, on December 18, 1969, with plaintiff through its agents Constellation Maritime Agencies, Inc. as amended by Addendum No. 3, wherein defendant GOTAAS LARSEN A.S. was substituted as Charterer. A copy of said charter party with all addenda is annexed hereto as Exhibit "A".

4. After the execution of said charter party,

defendant GOTAAS LARSEN A.S. subchartered the vessel to defendant SANKO. Defendant SANKO subchartered to defendant PARABOLA. PARABOLA subchartered to defendant HIMOFF, and HIMOFF subchartered to defendant MARDOFF PEACH. On information and belief, all said subcharters contained substantially the same terms and provisions as the charter party agreement between GOTAAS LARSEN and plaintiff. At all relevant times, SANKO, PARABOLA, HIMOFF and MARDOFF PEACH were subcharterers of the vessel.

5. In October 1974, defendants GOTAAS LARSEN A.S., SANKO, PARABOLA, HIMOFF and MARDOFF PEACH negligently and in breach of their warranties of the safety of ports visited by their orders, and in particular the warranties set forth in clauses 6 and 25 of the aforementioned charter party (Exhibit A) and the similar provisions of the aforesaid subcharter parties, ordered the vessel to the port of Churchill, Manitoba, Canada to load a cargo of grain.

6. The port of Churchill, at the time when the vessel was to visit there in accordance with aforesaid orders, was unsafe for a vessel of the size and type of the AGIA ERINI II because of the presence of ice, the movement of aids to navigation off their station due to ice, foul weather, inadequate tug, pilotage and port facilities.

7. The vessel proceeded to Churchill as ordered and entered there October 15, 1974, loaded its cargo and left said port on October 18, 1974.

8. As a result of the aforesaid unsafe conditions prevailing in the port of Churchill at the time of the vessel's visit there, the vessel sustained while entering the said port, while proceeding to her berth, while at her berth, and also while leaving the port damages amounting to $2,700,000, as nearly as can be determined at this time.

9. The aforesaid damages were suffered by the vessel and the plaintiff as a result of the defendants' negligence and breach of their warranties as aforesaid in ordering the vessel to an unsafe port.

10. On March 24, 1974, plaintiff advised GOTAAS LARSEN

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A.S. by letter that plaintiff is demanding arbitration of its aforesaid claim and that it is appointing Captain George Stam as arbitrator. To date defendant has not appointed its arbitrator.

WHEREFORE, plaintiff prays that:

a. Defendants be summoned to appear and answer the complaint.

b. An order be issued to compel all defendants to proceed to arbitration of plaintiff's claim in a consolidated arbitration.

c.(1) In the event defendant GOTAAS LARSEN A.S. cannot be found within the district, orders be issued for that defendant's goods and chattels, or credits and effects in the hands of

GOTAAS LARSEN INC.
122 East 42nd Street
New York, New York 10017

and

CHASE MANHATTAN BANK
422 Lexington Avenue
New York, New York

to be attached pursuant to Supplementary Rule B of the Federal Rules of Civil Procedure.

c.(2) In the event that defendants PARABOLA or MARDOFF PEACH cannot be found within the district, orders be issued for the attachment of any goods and chattels or credits and effects belonging to that defendant which cannot be found in the hands of

HIMOFF MARITIME ENTERPRISES, LTD.
645 Madison Avenue
New York, New York

pursuant to Supplementary Rule B of the Federal Rules of Civil Procedure.

d. Judgment be entered for the plaintiff against each defendant severally and jointly in the amount of plaintiff's damages aforesaid and for such other relief as may be just and proper.

Yours, etc.

POLES, TUBLIN, PATESTIDES
& STRATAKIS
Attorneys for Plaintiff
TRAMP SHIPPING CO., INC.
Office and P.O. Address
46 Trinity Place
New York, New York 10006
212-943-0110

By: _____
A Member of the Firm

Dated: New York, N.Y.
March 26, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC.

Plaintiff,

-against-

GOTAAS LARSEN A.S., SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD. MARDOFF-PEACH LTD.,

Defendants.

AFFIDAVIT

STATE OF NEW YORK)
:ss.:
COUNTY OF NEW YORK)

JOHN C. MAMOULAKIS, being duly sworn deposes and says:

He is an attorney associated with the firm of POLES, TUBLIN, PATESTIDES & STRATAKIS.

After a diligent search in the business and telephone directories for this district he has been unable to locate defendants GATAAS LARSEN A.S., PARABOLA SHIPPING UK LTD. and MARDOFF PEACH LTD. To the best of his information and belief the aforesaid defendants are not present in this district.

John C. Mamoulakis
JOHN C. MAMOULAKIS

Sworn to before me
this 26th day
of March, 1975.

Notary Public

Notary Public, State of New York
No. 24-[illegible]
Qualified in [illegible] County
Certificate filed with [illegible] Co. Clerk
Commission Expires March 30, 1976

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Exhibit A

12a

SKAARUP CHARTERING CORPORATION
21 West Street New York N Y 10006
CABLE ADDRESS
SHIPSHIP NEW YORK
TELEX NY 2137

Time Charter

GOVERNMENT FORM
Approved by the New York Produce Exchange
November 6th, 1913—Amended October 20th, 1921
August 6th, 1931; October 3rd, 1946

geared, self-trimmin bulk-carrier, engine aft,

This Charter Party, made and concluded in the City of New York, the 18th day of DECEMBER 19 69

Between CONSTELLATION MARITIME AGENCIES, INC. As Agents for
Owners of the good GREEK (Ownership / Nationality) ATLANTIC LINE of

of ... tons gross register, and ... tons net register having engines of ... indicated horse power

and with hull, machinery and equipment in a thoroughly efficient state, and classed

at ... of about 1,400,000 cubic feet bale capacity, and about 11,500 tons of 2240 lbs

net deadweight capacity (cargo and bunkers including fresh water and stores not exceeding one and one half percent of such deadweight capacity

allowing a minimum of ... tons) on a draft of ... feet ... inches on ... Summer freeboard, inclusive of permanent bunkers,

which are of the capacity of about in fair weather ... tons of fuel, and capable of steaming, fully laden, under good weather

conditions about 15 ... knots on a consumption of about 37 ... tons of best Welsh coal best grade fuel oil best grade Diesel oil

now ...

and ... EMERALD SHIPPING CORPORATION ... Charterers of the City of ... Liberia

Witnesseth, That the said Owners agree to let, and the said Charterers agree to hire the said vessel, from the time of delivery, for

about 12 months option further 6 months option further 6 months. First option declarable latest 270 days after delivery. Second option declarable 90 days after commencement, within below mentioned trading limits.

Charterers to have liberty to sublet the vessel for all or any part of the time covered by this Charter, but Charterers remaining responsible for

the fulfilment of this Charter Party.

of first option if exercised. Final period one month more or less in Charterer's option.

Vessel to be placed at the disposal of the Charterers, at when, where ready from yard, Japan

in such dock or at such wharf or place (where she may safely lie, always afloat, at all times of tide, except as otherwise provided in clause No. 6), as the Charterers may direct. If such dock, wharf or place be not available time to commence provided for in clause No. 3. Vessel on her delivery to be ready to receive cargo with clean swept holds and tight hatches, strong and in every way fitted for the service, having water ballast, winches and a sufficient number of derricks capable of handling lifts of ... tons, and with sufficient power to operate all the same simultaneously, donkey boiler with sufficient steam power, or equivalent power, and with sufficient

number of ... winchmen, also other power sufficient to run all the winches at one and the same time, and with sufficient number of officers, seamen, engineers and firemen for a vessel of her tonnage, to be employed in carrying lawful merchandise, including petroleum or its products, in proper containers, excluding ... explosives, acids, ammonium nitrate, arms, ammunitions, nuclear material and all other injurious, dangerous or inflammable cargo

as the Charterers or their Agents shall direct, on the following conditions:

1. That the Owners shall provide and pay for all provisions, wages and consular shipping and discharging fees of the Crew; shall pay for the insurance of the vessel, also for all the cabin, deck, engine room and other necessary stores, including boiler water and maintain her class and keep the vessel in a thoroughly efficient state in hull, machinery and equipment for and during the service.

2. That the Charterers shall provide and pay for all the fuel except as otherwise agreed, Port Charges, Pilotages, Agencies, Commissions, Consular Charges (except those pertaining to the Crew), and all other usual expenses except those before stated, but when the vessel puts into a port for causes for which vessel is responsible, then all such charges incurred shall be paid by the Owners. Fumigations ordered because of illness of the crew to be for Owners account. Fumigations ordered because of cargoes carried or ports visited while vessel is employed under this charter to be for Charterers account. All other fumigations to be for Charterers account after vessel has been on charter for a continuous period of six months or more.

Charterers are to provide necessary dunnage and shifting boards, also any extra fittings requisite for a special trade or unusual cargo, but Owners to allow them the use of any dunnage and shifting boards already aboard vessel. Charterers to have the privilege of using shifting boards for dunnage, they making good any damage thereto.

3. ~~Should the vessel not be ready to load (which readiness is to be given by cable or telex) on or before the 30th day of December, 1969, but not later than 4 p.m. on the fifteenth day of January, 1970, Charterers or their Agents to have the option of canceling this charter at any time not later than the day of vessel's readiness.~~ SEE CLAUSE #29

4. That the Charterers shall pay for the use and hire of the said Vessel at the rate of TWO DOLLARS & SEVENTY FIVE CENTS ($2.75) United States Currency per ton on vessel's total deadweight carrying capacity, including bunkers and stores, on (OSSO) summer freeboard, per Calendar Month, commencing on and from the day of her delivery, as aforesaid and at and after the same rate for any part of a month, hire to continue until the hour of the day of her re-delivery in like good order and condition, ordinary wear and tear excepted, to the Owners (unless lost) at United Kingdom, Continent, Mediterranean, U.S.A., South Coast, Japan, unless otherwise mutually agreed. Charterers are to give Owners not less than thirty (30) days notice of vessel's expected date of re-delivery and probable port of re-delivery.

St. Lawrence not west of Montreal. Charterer's privilege to trade outside IWL. Charterers to pay extra insurance incurred thereby, based on on valuation actually covered by Owners, which is maximum $5,500,000.00

$3.00

5. Payment of said hire to be made in New York in cash in United States Currency, semi-monthly in advance, and for the last half month or part of same the approximate amount of hire, and should same not cover the actual time, hire is to be paid for the balance day by day, as it becomes due, if so required by Owners unless bank guarantee or deposit is made by the Charterers, otherwise failing the punctual and regular payment of the hire, or bank guarantee, or on any breach of this Charter Party, the Owners shall be at liberty to withdraw the vessel from the service of the Charterers, without prejudice to any claim they (the Owners) may otherwise have on the Charterers. Time to count from 7 a.m. on the working day following that on which written notice of readiness has been given to Charterers or their Agents before 4 p.m., but if required by Charterers, they to have the privilege of using vessel at once, such time used to count as hire.

~~Cash for vessel's ordinary disbursements at any port may be advanced as required by the Captain by the Charterers or their Agents, subject to 2½ percent commission and such advances shall be deducted from the hire. The Charterers, however, shall in no way be responsible for the application of such advances.~~

6. That the cargo or cargoes be laden and/or discharged in any dock or at any wharf or place that Charterers or their Agents may direct, provided the vessel can safely lie always afloat at any time of tide, except at such places where it is customary for similar size vessels to safely lie aground.

7. That the whole reach of the Vessel's Hold, Decks, and usual places of loading (not more than she can reasonably stow and carry), also accommodations for Supercargo, if carried, shall be at the Charterers' disposal, reserving only proper and sufficient space for Ship's officers, crew, tackle, apparel, furniture, provisions, stores and fuel. Charterers have the privilege of passengers as far as accommodations allow. Charterers paying Owners ... per day per passenger for accommodations and meals. However, it is agreed that in case any fines or extra expenses are incurred in the consequence of the carriage of passengers, Charterers are to bear such risk and expense.

8. That the Captain shall prosecute his voyages with the utmost despatch, and is all render all customary assistance with ships crew and boats. The Captain (although appointed by the Owners), shall be under the orders and directions of the Charterers as regards employment and agency, and Charterers are to load, stow and trim their cargo at their expense under the supervision of the Captain, who is to sign Bills of Lading for cargo as presented, in conformity with Mates or Tally Clerk's receipts.

and discharge

9. That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain, Officers, or Engineers, the Owners shall on receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointments.

10. That the Charterers shall have permission to appoint a Supercargo, who shall accompany the vessel and see that voyages are prosecuted with the utmost despatch. He is to be furnished with free accommodation, and same, or an allowance in lieu, as provided for Captain's table. Charterers paying at the rate of ... per day. Owners to victual Pilots and Customs Officers, and also when authorized by Charterers or their Agents, to victual Tally Clerks, Stevedores Foreman, etc., Charterers paying at the current rate or actual cost for all such victualing. ~~of ...~~

11. That the Charterers shall furnish the Captain from time to time, with all requisite instructions and sailing directions, in writing, and the Captain shall keep a full and correct Log of the voyage or voyages, which are to be patent to the Charterers or their Agents, and furnish the Charterers, their Agents or Supercargo, when required, with a true copy of daily Logs, showing the course of the vessel and distance run and the consumption of fuel.

12. That the Captain shall use diligence in caring for the ventilation of the cargo.

13. ~~That the Charterers shall have the option of continuing this charter for a further period of ...~~

$3.00

with the utmost dispatch. He is to be furnished with free accommodation and same as provided for Captain at Charterers paying at the rate of ..... per day. Owners to victual Pilots and Customs Officers, and also, when authorized by Charterers or their Agents, to victual Tally Clerks, Stevedore's Foreman, etc. Charterers paying at the current rate for all such victualling. Not Used

11. That the Charterers shall furnish the Captain from time to time with all requisite instructions and sailing directions, in writing, and the Captain shall keep a full and correct Log of the voyage or voyages, which are to be patent to the Charterers or their Agents, and furnish the Charterers, their Agents or Supercargo, when required, with a true copy of daily Logs, showing the course of the vessel and distance run and the consumption of fuel.

12. That the Captain shall use diligence in caring for the ventilation of the cargo.

13. ~~That the Charterers shall have the option of continuing this charter for a further period of .....~~

~~on giving written notice thereof to the Owners or their Agents previous to the vessel's arrival at the first named terms or any declared option~~

14. That if required by Charterers, time not to commence before ..... APRIL 1, 1970 ..... and should vessel not have given written notice of readiness on or before ..... MAY 31, 1970 ..... but not later than 4 p.m. Charterers or their Agents to have the option of cancelling this Charter at any time not later than the day of vessel's readiness.

15. That in the event of the loss of time from deficiency of men or stores, fire, breakdown or damages to hull, machinery or equipment, grounding detention by average accidents to ship or cargo, drydocking for the purpose of examination or painting bottom, or by any other cause preventing the full working of the vessel, the payment of hire shall cease for the time thereby lost, and if upon the voyage the speed be reduced by defect in or breakdown of any part of her hull, machinery or equipment, the time so lost, and the cost of any extra fuel consumed in consequence thereof, and all extra expenses shall be deducted from the hire.

16. That should the Vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be returned to the Charterers at once. The act of God, enemies, fire, restraint of Princes, Rulers and People and all dangers and accidents of the Seas, Rivers, Machinery, Boilers and Steam Navigation and errors of Navigation throughout this Charter Party, always mutually excepted.

The vessel shall have the liberty to sail with or without pilots, to tow and to be towed, to assist vessels in distress, and to deviate for the purpose of saving life and property.

17. That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen, their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men.

18. That the Owners shall have a lien upon all cargoes and all sub-freights for any amounts due under this Charter, including General Average contributions, and the Charterers to have a lien on the Ship for all monies paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once. Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the owners in the vessel.

19. That all derelicts and salvage shall be for Owners' and Charterers' equal benefit after deducting Owners' and Charterers' expenses and Crew's proportion. General Average shall be adjusted, stated and settled, according to Rules 1 to 15, inclusive, 17 to 22, inclusive, and Rule F of York-Antwerp Rules 1950 at such port or place in the United States as may be selected by the carrier, and as to matters not provided for by these Rules, according to the laws and usages at the port of New York. In such adjustment disbursements in foreign currencies shall be exchanged into United States money at the rate prevailing on the dates made and allowances for damage to cargo claimed in foreign currency shall be converted at the rate prevailing on the last day of discharge at the port or place of final discharge of such damaged cargo from the ship. Average agreement or bond and such additional security, as may be required by the carrier, must be furnished before delivery of the goods. Such cash deposit as the carrier or his agents may deem sufficient as additional security for the contribution of the goods and for any salvage and special charges thereon, shall if required be made by the goods, consignees or owners of the goods to the carrier before delivery. Such deposit shall, at the option of the carrier, be payable in United States money and be remitted to the adjuster. When so remitted the deposit shall be held in a special account at the place of adjustment in the name of the adjuster pending settlement of the General Average and refunds or credit balances, if any, shall be paid in United States money.

1950

~~In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carriers is not responsible, by statute, contract or otherwise, the goods, the shipper or the consignee, jointly and severally, shall contribute with the carriers in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods. If a salving ship is owned or operated by the carriers, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers.~~

Provisions as to General Average in accordance with the above are to be included in all bills of lading issued hereunder.

20. Fuel used by the vessel while off hire, also for cooking, condensing water, or for grates and stoves to be agreed to as to quantity, and the cost of replacing same, to be allowed by Owners.

21. That as the vessel may be from time to time employed in tropical waters during the term of this Charter, Vessel is to be docked at a convenient place, bottom cleaned and painted whenever Charterers and Captain think necessary, at least once in every six months, reckoning from time of last painting, and payment of the hire to be suspended until she is again in proper state for the service.

.....

.....

~~22. Owners shall on completing the loading of the ship and after the last general cargo (but not bunkers) possible of handling has up to three tons dry measure capacity below each hatch, provided vessel is docked at a customary dock capable of handling same, have been taken aboard, and vessel is ready to receive cargo, but not before ..... (Owners also to provide on the vessel lanterns and oil for the purpose, and vessel to give use of electric light when in port, but any additional lights over those on board to be at Charterers expense. The Charterers to have the use of any gear on board the vessel.~~

21. Vessel to work night and day, as required by Charterers, and all winches to be at Charterers' disposal during loading and discharging. Steamer to provide one winchman per hatch to work winches day and night, as required. Charterers agreeing to pay officers, engineers, winchmen, deck hands and donkeyman for overtime work during the respective periods that the working hours and rates stated in the ship's articles. If the rules of the port or labor unions prevent crew from driving winches, Charterers to provide ~~[illegible]~~ at a lumpsum of $600.00 per calendar month or pro rata for all overtime work, including cleaning of holds, opening and closing of hatches and shifting of berths.

~~and shall provide sufficient winchmen to work all cargo, but Owners to pay overtime of officers, engineers and crew. Overtime to be for account of Charterers at current rates per hour.~~

24. It is also mutually agreed that this Charter is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States approved on the 13th day of February 1893 and entitled "An Act relating to Navigation of Vessels, etc." in respect of all cargo shipped under this charter to or from the United States of America. It is further subject to the following clauses, all of which are to be included in all bills of lading issued hereunder:

17.

U. S. A. Clause Paramount

This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States approved April 16 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent but no further.

~~Both-to-Blame Collision Clause~~

~~If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carrier.~~

25. The vessel shall not be required to enter any ice bound port, or any port where lights or light-ships have been or are about to be withdrawn by reason of ice, or where there is risk that in the ordinary course of this, the vessel will not be able on account of ice to safely enter the port or to get out after having completed loading or discharging.

26. Nothing herein stated is to be construed as a demise of the vessel to the Time Charterers. The owners to remain responsible for the navigation of the vessel, insurance, crew and all other matters same as when trading for their own account.

1 1/42

27. A commission of ~~2½~~ per cent is payable by the Vessel and Owners to ..... SKAARUP CHARTERING CORPORATION

..... and 1½ % TO CONSTELLATION MARITIME AGENCIES, INC.

on hire earned and paid under this Charter, and also upon any continuation or extension of this Charter.

28. ~~An address commission of 3½ per cent payable to ..... on the hire earned and paid under this Charter.~~

~~By cable authority from~~

~~The original Charter Party is not in connection~~

~~As ..... For Owners~~

~~BROKERS~~

Clauses Nos. 29 through 37, both inclusive, as attached, are to be considered fully incorporated in this charter.

EMERALD SHIPPING CORPORATION
BY GOTAAS-LARSEN, INC.
AS AGENTS ONLY

Constellation Maritime Agencies Inc.
As Agents for Owners,
Theodore Tsagaris

Exhibit A

RIDER TO TIME CHARTER PARTY DATED NEW YORK, N.Y., DECEMBER 18th, 1969 FOR THE m/s "AGIA ERINI II"

29. When vessel leaves yard, same will consume for first 36 hours:

	Marine Diesel
36 hrs. - 14 days	IFO 400
15/30 days	IFO 1000
From there on	IFO 1200

Differential of price of bunkers between bunkers as outlined above and IFO 1200 will be for Owner's account.

Bunkers on redelivery sufficient to reach nearest bunkering installation. Bunker price at Charterers' current contract price at redelivery, if Vessel bunkers after delivery same to be at Charterers' current contract price.

30. Charterers' privilege to take on bunkers prior to delivery at Owner's time, provided this does not interfere in any way with activities at the yard.

31. Owners warrant that this vessel or any other controlled vessel has not called Cuba or North Vietnam ports or place after January 1,1962, nor will enter any such port or place prior to completion of loading under this charter party.

32. It is understood Vessel is approved for grain without fittings and can carry ore in alternate holds.

33. An on-hire survey is to be held at the delivery port by an impartial surveyor who will submit a survey report to both parties. At the redelivery port, a survey is to be held also in the aforementioned manner. Time and expenses for the survey to be borne equally.

34. Charterers are not to be responsible for stevedore or other damage to the Vessel unless notified in writing by the Master at time of occurence of damage; Master is to cooperate with Charterers and Agents in giving prompt notice of claim in writing to party causing damage.

35. New Jason Clause, New Both-To-Blame Collision Clause, Chamber of Shipping War Risk Clauses No. 1 and 2, and Canadian Clause Paramount, are to be considered part of this charter party and are to be included in Bills of Lading issued hereunder.

36. Charterers have the privilege of flying their house flag and painting their markings on Vessel's funnel and are to restore marking before redelivery at Charterers' time and expense.

37. Cost of radiograms sent by Vessel on Timecharterers' behalf to be for Charterers' account.

14a

In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which or for the consequences of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be or incurred, and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if such salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery.

NEW BOTH-TO-BLAME COLLISION CLAUSE

If the liability for any collision in which the vessel is involved while performing this Bill of Lading fails to be determined in accordance with the laws of the United States of America, the following clause shall apply:

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, Mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the Owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her Owners insofar as such loss or liability represents loss of or damage to or any claim whatsoever of the Owners of said goods paid or payable by the other or non-carrying ship or her Owners to the Owners of the said goods and set off, recouped or recovered by the other or non-carrying ship or her Owners as part of their claim against the carrying ship or Carrier"

The foregoing provisions shall also apply where the Owners, Operators or those in charge of the ship or ships objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contract.

WAR RISK CLAUSES

1. No Bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaded after Bills of Lading have been signed, or if the port to which the ship has been ordered to discharge either on signing Bills of Lading or thereafter be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the Owner shall discharge the cargo at any other port covered by this charter party is ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above-mentioned), and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered

2. The ship shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the vessel sails or any department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person having, under the terms of the War Risk Insurance on the ship, the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done, the same shall be deemed a deviation, and delivery in accordance with such orders or direction shall be a fulfillment of the contract voyage and the freight shall be payable accordingly.

CANADIAN CLAUSE PARAMOUNT

This Bill of Lading, so far as it relates to the carriage of goods by water, shall have effect, subject to the provisions of the Water Carriage of Goods Act, 1936, enacted by the Parliament of the Dominion of Canada, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under the said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such term shall be void to that extent but no further.

15a
Exhibit A

ADDENDUM NO I

Referring to Charter Party dated New York, December 18, 1969 between Constellation Maritime Agencies, Inc. as Agents for Owners of "AGIA ERINI II" and Emerald Shipping Corporation

IT IS HEREBY MUTUALLY UNDERSTOOD AND AGREED THAT:

In terms of the insertion in line 10 the following final specifictions have been established:

Freeboard (Summer):	13'-11 1/2
Full Load Draft (Summer) MLD:	35'-00 1/4
Full Load Draft (Summer) EXT:	35'-01 1/8
Full Load Displacement:	39,249 LT
Light Weight:	7,345 LT
Dead Weight:	31,904 LT
Registered Net Tonnage:	12,645 Tons
Registered Gross Tonnage:	18,628.12 Tons
Length Overall:	599'.01"
Moulded Breadth:	83' 11 7/8"
Moulded Depth:	48' 10 5/8"
Speed:	About 14.7 Knots
Consumption:	About 39/40 Tons IFO 1200 Seconds and 2 Tons Diesel Oil

All other terms, conditions, exceptions of said Charter Party to remain unaltered and in full force and effect.

EMERALD SHIPPING CORPORATION
BY: GOTAAS-LARSEN, INC.
AS AGENTS ONLY

VICE PRESIDENT

16a

Exhibit A

(G-L #27)

September 18, 1970

ADDENDUM NO. 2

Referring to Timecharter Party dated New York, New York, December 18, 1969, for the m/s "AGIA ERINI II" between CONSTELLATION MARITIME AGENCIES, INC., As Agents for Owners and EMERALD SHIPPING CORPORATION, Charterers,

IT IS HEREBY MUTUALLY UNDERSTOOD AND AGREED THAT:

1) Charterers exercise their option in accordance with lines 14/15 of the above charter party.

2) The above charter is converted into a timecharter of minimum 48 months maximum 50 months duration.

3) The average rate of hire payable for this period counting retroactively to the delivery of the ship on 4/30/1970 will be $3.50 per ton.

4) Charterers will pay the revised rate of $3.5872091 for the remaining time of the charter party commencing 9/30/1970.

All other terms, conditions, exceptions and addenda thereto of said charter party to remain unaltered and in full force and effect.

EMERALD SHIPPING CORPORATION
BY: GOTAAS-LARSEN, INC.
AS AGENTS ONLY

Robert W. Tyd

Robert W. Tyd-Vice-President

CONSTELLATION MARITIME AGENCIES Inc
As Agents For Owners
Theodore Tsaganis

Exhibit A 17a

SKAARUP CHARTERING CORPORATION
21 WEST STREET
NEW YORK, N. Y. 10006

CABLE ADDRESS
"SKAARCHART NEW YORK"
NEW BOE CODE
LOMBARD CODE

January 3, 1972
(G-L #27)

ADDENDUM NO. 3

Referring to Timecharter Party dated New York, New York December 18, 1969, for the M/S "AGIA ERINI II" between CONSTELLATION MARITIME AGENCIES, INC., As Agents For Owners and EMERALD SHIPPING CORPORATION, Charterers,

IT IS HEREBY MUTUALLY AGREED AND UNDERSTOOD THAT:

As of the termination of the current voyage (presently expected to be about January 28, 1972) Gotaas Larsen A/S Oslo is hereby substituted for Emerald Shipping Corporation, Liberia, as Charterers.

All other terms, conditions, exceptions and addenda thereto of said charter party to remain unaltered and in full force and effect.

EMERALD SHIPPING CORPORATION
BY: GOTAAS-LARSEN, INC.
AS AGENTS ONLY

Robert W. Tyd, Vice-President

GOTAAS-LARSEN A/S

Rolf Pettersen, Man. Director

CONSTELLATION MARITIME AGENCIES, Inc.
As Agents for Owners

Exhibit A 18a

SKAARUP CHARTERING CORPORATION
475 STEAMBOAT ROAD
GREENWICH, CONN. 06830
CABLE ADDRESSES "SKAPCHART" "SKAARTANK" GREENWICH, CONN.

May 25, 1973

G-L #27

ADDENDUM NO. IV

Referring to Timecharter Party dated New York, New York December 18, 1969, for the m/s "AGIA ERINI II" between CONSTELLATION MARITIME AGENCIES, INC. as Agents for Owners and GOTAAS LARSEN A/S Oslo, Charterers.

IT IS HEREBY MUTUALLY UNDERSTOOD AND AGREED THAT:
Effective June 1, 1973

1) The period covered by this charter party will be extended for six (6) years two (2) months more or less at Charterers option as of June 1, 1973.

2) Hire to be paid at the rate of U.S. dollars four ($4.00) per dead weight ton per calendar month as of June 1, 1973.

3) Overtime - U.S. dollars one thousand ($1,000.00) per calendar month as of June 1, 1973.

4) Lines 32 thru 34 - of charter party to be amended to read "within institute warranty limits (as presently constituted or as may be widened in the future) excluding Cuba, Isreal, North Vietnam and North Korea (unless circumstances should be normalized during charter period) also excluding Great Lakes".

5) Line 147 - of charter party right hand margin delete "cleaning of holds".

All other terms, conditions, exceptions of said charter party to remain unaltered and in full force and effect.

GOTAAS-LARSEN, INC., as Agents
for and on behalf of
GOTAAS-LARSEN A/S

Robert W. Tyd; Vice President

Constellation Maritime Agencies Inc
As Agents for Owners
Theodore Kaufman

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC.,

Plaintiff,

-against-

GOTTAAS-LARSEN A.S., SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH LTD.,

Defendants.

Index No. 75 Civ. 1549

AMENDMENT TO COMPLAINT

Judge Weker

Plaintiff, TRAMP SHIPPING CO., INC., by its attorneys POLES, TUBLIN, PATESTIDES & STRATAKIS, for its amendment to its complaint alleges as follows:

1. The relief prayed for in the complaint is deleted and instead, the following matter is pleaded;

WHEREFORE, plaintiff prays that:

a. Defendants be summoned to appear and answer the complaint.

b. An order be issued to compel all defendants to proceed to arbitration of plaintiff's claim in a consolidated arbitration.

c.(1) In the event defendant GOTAAS LARSEN A.S. cannot be found within the district, process be issued to attach goods and chattels, or credits and effects belonging to GOTAAS LARSEN A.S. up to $2,700,000.00 in the hands of

GOTAAS LARSEN INC.
122 East 42nd Street
New York, New York 10017

and in the hands of

CHASE MANHATTAN BANK
422 Lexington Avenue
New York, New York

pursuant to Supplementary Rule B of the Federal Rules of Civil Procedure.

c.(2) In the event that Defendant PARABOLA SHIPPING UK LTD., cannot be found within the district, process be issued to attach any goods and chattels or credits and effects belonging to PARABOLA SHIPPING UK LTD. up to $2,700,000.00, in the hands of

HIMOFF MARITIME ENTERPRISES, LTD.
645 Madison Avenue
New York, New York

pursuant to Supplementary Rule B of the Federal Rules of Civil Procedure.

c.(3) In the event that defendant MARDOFF PEACH LTD., cannot be found within the district, process be issued to attach any goods and chattels or credits and effects belonging to MARDOFF PEACH LTD., up to $2,700,000.00, in the hands of

HIMOFF MARITIME ENTERPRISES, LTD.
645 Madison Avenue
New York, New York

pursuant to Supplementary Rule B of the Federal Rules of Civil Procedure.

d. Judgment be entered for the plaintiff against each defendant severally and jointly in the amount of $2,700,000.00, and for such other relief as may be just and proper.

Yours, etc.

POLES, TUBLIN, PATESTIDES
& STRATAKIS
Attorneys for Plaintiff
TRAMP SHIPPING CO., INC.
Office and P.O. Address
46 Trinity Place
New York, New York 10006
(212) 943-0110

By /s/ Theodore Datis
A Member of the Firm

Dated: New York, New York
March 21, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC.,	:	
Plaintiff,	:	73 Civ. 1549 - HFW
-against-	:	
GOTAAS-LARSEN A/S, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH LTD.,	:	ANSWER TO AMENDED COMPLAINT AND CROSS CLAIM
Defendants.	:	

Defendants, HIMOFF MARITIME ENTERPRISES, LTD., and PARABOLA SHIPPING (UK) LTD., by their attorneys, VINCENT, BERG, RUSSO, MARCIGLIANO & ZAWACKI for their answer to the amended complaint of the plaintiff, TRAMP SHIPPING CO. INC., respectfully alleges upon information and belief as follows:

1. Admit the allegations contained in paragraph 1 of the complaint.

2. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 2 of the complaint.

3. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 3 of the complaint.

4. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 4 of the complaint except admits on information and belief that defendant PARABOLA SHIPPING (UK) LTD. subchartered from defendant SANKO STEAMSHIP CO. LTD. and that defendant HIMOFF MARITIME ENTERPRISES, LTD. subchartered the vessel to defendant MARDOFF PEACH LTD.

5. Deny the allegations contained in Paragraph 5 of the complaint.

6. Deny the allegations contained in Paragraph 6 of the complaint.

7. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 7 of the complaint.

8. Deny the allegations contained in Paragraph 8 of the complaint.

9. Deny the allegations contained in Paragraph 9 of the complaint.

10. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 10 of the complaint.

AS AND FOR AN AFFIRMATIVE DEFENSE DEFENDANTS PARABOLA SHIPPING (UK) LTD. AND HIMOFF MARITIME ENTERPRISES, LTD. ALLEGE AS FOLLOWS:

11. Neither PARABOLA SHIPPING (UK) LTD. nor HIMOFF MARITIME ENTERPRISES, LTD. has a contractual relationship with the plaintiff nor have they agreed in writing to arbitrate with the plaintiff. No demand for arbitration has been made by THE SANKO STEAMSHIP CO., LTD. with whom defendant PARABOLA SHIPPING (UK) LTD. has agreed to arbitrate disputes.

AS AND FOR A CROSS CLAIM BY PARABOLA SHIPPING (UK) LTD. AND HIMOFF MARITIME ENTERPRISES, LTD. AGAINST DEFENDANT MARDORF PEACH LTD. IT IS ALLEGED ON INFORMATION AND BELIEF AS FOLLOWS:

12. That at all relevant times MARDORF PEACH LTD. was subcharterer of the M.V "AGIA ERINI II" from HIMOFF

MARITIME ENTERPRISES, LTD. Said Charter Party entered into in the City of Montreal on September 13, 1974 is identical in all relevant details to Charter Party entered into with PARABOLA SHIPPING (UK) LTD. and SANKO STEAMSHIP CO., LTD.

13. Plaintiff's complaint further alleges that as a result of defendants' negligence and breach of warranty, plaintiff's vessel suffered damages amounting to about $2,700,000.00.

14. If HIMOFF MARITIME ENTERPRISES, LTD. or PARABOLA SHIPPING (UK) LTD. should be held liable to plaintiff for negligence and/or breach of charterparty warranty, which liability is expressly denied, such liability will have been brought about and caused by the negligence and/or breach of warranty of defendant MARDOFF PEACH LTD.

15. If as a result of the matters alleged in the complaint (attached hereto) and in this answer HIMOFF MARITIME ENTERPRISES, LTD. or PARABOLA SHIPPING (UK) LTD. is held liable to plaintiff for any or all damages alleged then defendant MARDOFF PEACH LTD. is liable to indemnify HIMOFF MARITIME ENTERPRISES, LTD. and/or PARABOLA SHIPPING (UK) LTD. together with attorney's fees.

WHEREFORE, defendants PARABOLA SHIPPING (UK) LTD. and HIMOFF MARITIME ENTERPRISES, LTD. demand:

1. Judgment be entered dismissing the complaint of the plaintiff against defendants HIMOFF MARITIME ENTERPRISES, LTD. and PARABOLA SHIPPING (UK) LTD. with costs and disbursements of this action.

2. That in the event judgment is rendered in favor of plaintiff, that such judgment be entered against defendant MARDOFF PEACH LTD. for all damages plus interest

and costs.

3. That in the event judgment is entered against PARABOLA SHIPPING (UK) LTD. and/or HIMOFF MARITIME ENTERPRISES, LTD. that PARABOLA SHIPPING (UK) LTD. and/or HIMOFF MARITIME ENTERPRISES, LTD. have judgment over and indemnity as against MARDOFF PEACH LTD. plus interest, costs and disbursements and attorney's fees.

4. In the event arbitration is ordered to commence between PARABOLA SHIPPING (UK) LTD. and any other party or HIMOFF MARITIME ENTERPRISES, LTD. and any other party that arbitration also be ordered by the court as between HIMOFF MARITIME ENTERPRISES LTD. and MARDOFF PEACH LTD. pursuant to their Charter Party agreement dated September 13, 1974 and attached hereto as Exhibit "A".

5. Such other and further or different relief as may be just.

Dated: New York, New York
May 22, 1975.

VINCENT, BERG, RUSSO,
MARCIGLIANO & ZAWACKI
Attorneys for Defendants
PARABOLA SHIPPING (UK) LTD.
and HIMOFF MARITIME ENTERPRISES, LTD.
127 John Street
New York, New York 10038

BY _____
FRANK M. MARCIGLIANO
Member of Firm.

BEST COPY AVAILABLE

TELEPHONE 849 9191
TELEX 01 2795

SCANDIA SHIPPING AGENCIES LTD.
STEAMSHIP AGENTS AND BROKERS
Head Office: 201 St. James Street
Montreal H2Y 2N3, Que. - Canada

CABLE ADDRESS SCANSHIP
TWX 610 421 3427
CARGO CHARTERING INC.
645 MADISON AVE.
NEW YO... 10022

ORIGINAL Time Charter

GOVERNMENT FORM

Approved by the New York Produce Exchange

November 6th, 1913—Amended October 20th, 1921; August 6th, 1931; October 3rd, 1946

This Charter Party, made and concluded in Montreal 13th day of September 1974

Between Bikoff Maritime Enterprises Co.

Disponent — Owners of the good... Gronk (Steamship / Motorship) "AGIA TRINI II" of...

of ... tons gross register, and ... tons net register, having engines of ... indicated horse power

and with hull, machinery and equipment in a thoroughly efficient state, and classed ... American Bureau ... tons of 2240 lbs.

at ... of about ... cubic feet bale capacity, and about 31,000 ... tons of 2240 lbs. deadweight capacity (cargo and bunkers, including fresh water and stores not exceeding ... tons, being capable of carrying ... tons on a draft of ... feet ... inches on the Summer freeboard, inclusive of permanent bunkers, which are of the capacity of about ... tons of fuel, and capable of steaming, fully laden, under good weather conditions about 15 knots on a consumption of about 37 tons of best ... now ... Reading

and Mardorf Peach Company Limited Charterers of the City of London

Witnesseth, That the said Owners agree to let, and the said Charterers agree to hire the said vessel, from the time of delivery, for about one time charter trip via Churchill, Manitoba and St. Lawrence/East Coast Canada and/or Continental or U.S. north of Hatteras, first port of within below mentioned trading limits, Charterers to have liberty to substitute the vessel for all or any part of the time covered by this Charter, but Charterers remaining responsible for the fulfilment of this Charter Party.

Vessel to be placed at the disposal of the Charterers, at on dropping outward sea pilot, Hamburg.

about — I.T.O. 1200 seconds plus 2 tons D.O.

300 tons

Churchill

in bulk, explosives, ammonium nitrate, nuclear, arms, ammunition, nuclear materials, and all other injurious, dangerous or inflammable cargo

Charterers prevailing trade outside International Good Hope Limits. Charterers to pay extra insurance incurred thereby, if unless, always within International Trading Limits as presently constituted, Cuba, Israel and Great Lakes always

excluded

daily or pro-rata including overtime

(See Clause 30)

4. That the Charterers shall pay for the use and hire of the said vessel at the rate of U.S. DOLLARS AND FIFTY ($7.50) Cents per ton on the vessel's total deadweight carrying capacity, including bunkers and stores, per Calendar month, commencing from the time and date when the vessel is delivered by the Owners (as per Clause 1) and at and after the same rate for any part of a month; hire to continue until the time of the redelivery of the vessel (unless lost) to the Owners (loss of vessel proved or not proved) in like good order and condition, ordinary wear and tear excepted, at a port in Charterers option, one safe port U.S. or in Charterers option, one safe port Continent/Mediterranean/Black Sea range.

A.R.A./Hamburg range; Charterers to pay all outport expenses

Charterers are to have the option of extending the charter period for a further period of approximately

Payment of hire to be made in U.S. Currency by remittance to ... in every 30 days, and in advance, the last month or part of same the approximate amount of hire, and should same not cover the actual time, adjustment to be made at each succeeding payment. Should the vessel be lost, money paid in advance and not earned (reckoning from the date of loss or last accounts received) to be returned to Charterers immediately. The act of God, enemies, fire, restraint of princes, rulers and people, and all dangers and accidents of the seas, rivers, machinery, boilers and steam navigation, and errors of navigation throughout this Charter Party, always mutually excepted.

5 days final notice together with final redelivery port.

(See Clause 31)

The vessel to be delivered and redelivered in any dock or at any wharf or place that Charterers or their Agents may direct, provided the vessel can safely lie always afloat at any time of the ... The vessel to be delivered and redelivered between the hours of ... and ... on ... and ... respectively, Sundays and holidays excepted, unless sooner mutually agreed. The Captain (although appointed by the Owners) shall be under the orders and directions of the Charterers as regards employment and agency; and Charterers are to load, stow, trim, lash, unlash, secure, tally, receive and discharge the cargo at their expense under the supervision of the Captain, who is to sign Bills of Lading for

fire discharge

$3.00

of $1.00

cargo as presented, in accordance with the Mate's receipts. Charterers are to furnish all requisite dunnage and shifting boards, also any extra fittings requisite for a special trade or unusual cargo, but Owners to allow the use of any dunnage they may have on board. Owners to allow Charterers the privilege of using shifting boards for dunnage, they making good any damage thereto.

That the Captain shall use diligence in caring for the ventilation of the cargo.

That the Charterers shall have the option of continuing this charter for a further period of ...

That the Captain shall keep the vessel's log, and all other usual papers, except those which pertain to the private business of the Owners, accessible to the Charterers or their Agents, and furnish the Charterers, their Agents or Supercargo, when required, with a true copy of daily logs, showing the course of the vessel and distance run and the consumption of fuel.

That the Captain shall use diligence in caring for the ventilation of the cargo.

That the Charterers shall have the option of continuing this charter for a further period of ...

Exc. Discharge

$3.00

of $1.00

September 19, 1974

September 23, 1974

1950

See Clause 41

1-1/4

1-1/4% to Cargo Chartering and 2-1/2% to Inparma Shipping (Belgium) n.v.

SCANDIA SHIPPING AGENCIES LIMITED

Antwerp

By virtue authority from

Clauses Nos. 29 through 38 as attached hereto, are to be considered fully incorporated in this Charter Party.

The original Charter Party in our

as agents to charterers

FOR HIMOFF MARITIME ENTERPRISES, LTD.

Exhibit A 26a

RIDER TO CHARTER PARTY DATED MONTREAL, SEPTEMBER 13TH, 1974 - M.V. "AGIA ERINI II"

Clause 29: Bunkers on delivery and redelivery as on board, approximately the same quantities both ends. Same prices to apply for delivery and redelivery, i.e. U.S. DOLLARS SEVENTY-FIVE ($75.00) per long ton for I.F.O. and U.S. DOLLARS ONE HUNDRED AND TEN ($110.00) per long ton for diesel. Charterers privilege to bunker vessel at Hamburg for their account while discharging, provided it does not interfere with the discharging. Owners privilege to bunker for their account at the port of redelivery, provided it does not interfere with the discharging.

Clause 30: Charterers are not to be responsible for stevedore or other damage to the vessel unless notified in writing by the Master at time of occurrence of damage. Master is to cooperate with Charterers and Agents in giving prompt notice of claim in writing to party causing damage.

Clause 31: Hire to be remitted to: -

Himoff Maritime Enterprises Limited

Account: 121-101-0742

With the Chase Manhattan Bank,
120 World Trade Centre Concourse,
New York

Attention: Mr. Charles Keeler, Vice President

And to immediately full rate cable advise Beneficiary through Chase Manhatten Bank, 120 World Trade Centre Concourse, New York, with value date same date as remittance.

Clause 32: Vessel's Description: (Particulars all about)

M.V. "AGIA ERINI II"

- Greek Flag
- Built 1970
- 31,904 total deadweight
- 35 feet 1.1/8 inches draft
- 1,361,054 cubic feet grain
- plus 147,924 cubic feet in bleeding wingtanks
- 6 holds/6hatches
- 12 X 5 tons winches/derricks; t.p.i. 100
- 599 feet 1 inch length overall
- 84 feet 00 inches beam

Clause 33: New Jason Clause; New Both-to Blame Collision Clause; Chamber of Shipping War Risks Clauses Nos. 1 and 2, are to be considered part of this Charter Party and are to be included in Bills of Lading issued hereunder.

Clause 34: Charterers to reimburse Owners with an amount upto $27,000.00 towards extra insurance assessed by the Underwriters, for trading Churchill. Owners eventually to support such extra insurance by Underwriters' invoice. Any excess over $27,000.00 is to be absorbed by the Owners.

RIDER TO CHARTER PARTY DATED MONTREAL, SEPTEMBER 13TH, 1974 - M.V. "AGIA ERINI II"

Clause 35: Vessel to be left in safe seaworthy trim to Master's satisfaction for shifting between loading ports.

Clause 36: It is understood vessel is approved for grain loading without fittings and carry ore in alternate holds.

Clause 37: An on-hire survey is to be held at Hamburg by impartial surveyor who will submit his survey report to both parties. At the redelivery port, a survey is to be held also in the aforementioned manner. Time and expenses for the survey to be borne equally.

Clause 38: Cost of radiograms sent by vessel for Time Charterers behalf to be for Charterers account.

NEW JASON CLAUSE. In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if such salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery.

BOTH TO BLAME COLLISION CLAUSE. If the liability for any collision in which the vessel is involved while performing this Bill of Lading falls to be determined in accordance with the laws of the United States of America, the following clause shall apply:—

If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owner of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier.

The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

WAR RISKS CLAUSE. "1. No Bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaded after Bills of Lading have been signed, or if the port to which the ship has been ordered to discharge either on signing Bills of Lading or thereafter be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the owner shall discharge the cargo at any other port covered by this Charterparty as ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered."

"2. The ship shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the vessel sails or any department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person having, under the terms of the War Risks Insurance on the ship, the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done, the same shall not be deemed a deviation, and delivery in accordance with such orders or directions shall be a fulfillment of the contract voyage and the freight shall be payable accordingly." (C.S.U.K., London—26th September,

TIME CHARTER DATED DECEMBER 18, 1969
BETWEEN CONSTELLATION MARITIME AGENCIES,
INC. AS AGENTS FOR OWNERS AND EMERALD
SHIPPING CORPORATION, CHARTERERS.

REPRODUCED AT P. 12a

RIDER TO TIME CHARTER PARTY DATED NEW YORK, N.Y., DECEMBER 18th, 1969 FOR THE m/s "AGIA ERINI II"

29. When vessel leaves yard, same will consume for first 36 hours:

	Marine Diesel
36 hrs. - 14 days	IFO 400
15/30 days	IFO 1000
From there on	IFO 1200

Differential of price of bunkers between bunkers as outlined above and IFO 1200 will be for Owner's account.

Bunkers on redelivery sufficient to reach nearest bunkering installation. Bunker price at Charterers' current contract price at redelivery, if Vessel bunkers after delivery same to be at Charterers' current contract price.

30. Charterers' privilege to take on bunkers prior to delivery at Owner's time, provided this does not interfere in any way with activities at the yard.

31. Owners warrant that this vessel or any other controlled vessel has not called Cuba or North Vietnam ports or place after January 1,1962, nor will enter any such port or place prior to completion of loading under this charter party.

32. It is understood Vessel is approved for grain without fittings and can carry ore in alternate holds.

33. An on-hire survey is to be held at the delivery port by an impartial surveyor who will submit a survey report to both parties. At the redelivery port, a survey is to be held also in the aforementioned manner. Time and expenses for the survey to be borne equally.

34. Charterers are not to be responsible for stevedore or other damage to the Vessel unless notified in writing by the Master at time of occurence of damage; Master is to cooperate with Charterers and Agents in giving prompt notice of claim in writing to party causing damage.

35. New Jason Clause, New Both-To-Blame Collision Clause, Chamber of Shipping War Risk Clauses No. 1 and 2, and Canadian Clause Paramount, are to be considered part of this charter party and are to be included in Bills of Lading issued hereunder.

36. Charterers have the privilege of flying their house flag and painting their markings on Vessel's funnel and are to restore marking before redelivery at Charterers' time and expense.

37. Cost of radiograms sent by Vessel on Timecharterers' behalf to be for Charterers' account.

ment of the voyage resulting from any clause whatsoever, whether due to negligence or not, for which or for the consequences of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be or incurred, and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if such salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery.

NEW BOTH-TO-BLAME COLLISION CLAUSE

If the liability for any collision in which the vessel is involved while performing this Bill of Lading fails to be determined in accordance with the laws of the United States of America, the following clause shall apply:

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, Mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the Owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her Owners insofar as such loss or liability represents loss of or damage to or any claim whatsoever of the Owners of said goods paid or payable by the other or non-carrying ship or her Owners to the Owners of the said goods and set off, recouped or recovered by the other or non-carrying ship or her Owners as part of their claim against the carrying ship or Carrier"

The foregoing provisions shall also apply where the Owners, Operators or those in charge of the ship or ships objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contract.

WAR RISK CLAUSES

1. No Bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaded after Bills of Lading have been signed, or if the port to which the ship has been ordered to discharge either on signing Bills of Lading or thereafter be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the Owner shall discharge the cargo at any other port covered by this charter party is ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above-mentioned), and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered.

2. The ship shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the vessel sails or any department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person having, under the terms of the War Risk Insurance on the ship, the right to give such orders or directions and if by reason of and in compliance with any such order or directions anything is done or is not done, the same shall be deemed a deviation and delivery in accordance with such orders or direction shall be a fulfilment of the contract voyage and the freight shall be payable accordingly.

CANADIAN CLAUSE PARAMOUNT

This Bill of Lading, so far as it relates to the carriage of goods by water, shall have effect, subject to the provisions of the Water Carriage of Goods Act, 1936, enacted by the Parliament of the Dominion of Canada, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under the said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such term shall be void to that extent but no further.

BEST COPY AVAILABLE

ADDENDUM NO I

Referring to Charter Party dated New York, December 18, 1969 between Constellation Maritime Agencies, Inc. as Agents for Owners of "AGIA ERINI II" and Emerald Shipping Corporation

IT IS HEREBY MUTUALLY UNDERSTOOD AND AGREED THAT:

In terms of the insertion in line 10 the following final specifictions have been established:

Freeboard (Summer):	13'-11 1/2
Full Load Draft (Summer) MLD:	35'-00 1/4
Full Load Draft (Summer) EXT:	35'-01 1/8
Full Load Displacement:	39,249 LT
Light Weight:	7,345 LT
Dead Weight:	31,904 LT
Registered Net Tonnage:	12,645 Tons
Registered Gross Tonnage:	18,628.12 Tons
Length Overall:	599'.01"
Moulded Breadth:	83' 11 7/8"
Moulded Depth:	48' 10 5/8"
Speed:	About 14.7 Knots
Consumption:	About 39/40 Tons IFO 1200 Seconds and 2 Tons Diesel Oil

All other terms, conditions, exceptions of said Charter Party to remain unaltered and in full force and effect.

EMERALD SHIPPING CORPORATION
BY: GOTAAS-LARSEN, INC.
AS AGENTS ONLY

VICE PRESIDENT

(G-I #27)

September 18, 1970

ADDENDUM NO. 2

Referring to Timecharter Party dated New York, New York, December 18, 1969, for the m/s "AGIA ERINI II" between CONSTELLATION MARITIME AGENCIES, INC., As Agents For Owners and EMERALD SHIPPING CORPORATION, Charterers,

IT IS HEREBY MUTUALLY UNDERSTOOD AND AGREED THAT:

1) Charterers exercise their option in accordance with lines 14/15 of the above charter party.

2) The above charter is converted into a timecharter of minimum 48 months maximum 50 months duration.

3) The average rate of hire payable for this period counting retroactively to the delivery of the ship on 4/30/1970 will be $3.50 per ton.

4) Charterers will pay the revised rate of $3.5872091 for the remaining time of the charter party commencing 9/30/1970.

All other terms, conditions, exceptions and addenda thereto of said charter party to remain unaltered and in full force and effect.

EMERALD SHIPPING CORPORATION
BY: GOTAAS-LARSEN, INC.
AS AGENTS ONLY

Robert W. Tyd-Vice-President

CONSTELLATION MARITIME AGENCIES Inc
AS AGENTS FOR OWNERS
Theodore Tsagaris

33a

SKAARUP CHARTERING CORPORATION

21 WEST STREET
NEW YORK, N. Y. 10006

January 3, 1972
(G-L #27)

ADDENDUM NO. 3

Referring to Timecharter Party dated New York, New York December 18, 1969, for the M/S "AGIA ERINI II" between CONSTELLATION MARITIME AGENCIES, INC., As Agents For Owners and EMERALD SHIPPING CORPORATION, Charterers,

IT IS HEREBY MUTUALLY AGREED AND UNDERSTOOD THAT:

As of the termination of the current voyage (presently expected to be about January 28, 1972) Gotaas Larsen A/S Oslo is hereby substituted for Emerald Shipping Corporation, Liberia, as Charterers.

All other terms, conditions, exceptions and addenda thereto of said charter party to remain unaltered and in full force and effect.

MERALD SHIPPING CORPORATION
: GOTAAS-LARSEN, INC.
AGENTS ONLY

bert W. Tyd, Vice-President

OTAAS-LARSEN A/S

olf Pettersen, Man. Director

CONSTELLATION MARITIME AGENCIES, Inc.
As Agents for Owners

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC.,	:	
Plaintiff,	:	73 Civ. 1549 - HFW
-against-	:	
GOTAAS-LARSEN A/S, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH LTD.,	:	ANSWER TO AMENDED COMPLAINT AND CROSS CLAIM
Defendants.	:	

Defendants, HIMOFF MARITIME ENTERPRISES, LTD., and PARABOLA SHIPPING (UK) LTD., by their attorneys, VINCENT, BERG, RUSSO, MARCIGLIANO & ZAWACKI for their answer to the amended complaint of the plaintiff, TRAMP SHIPPING CO. INC. respectfully alleges upon information and belief as follows:

1. Admit the allegations contained in paragraph 1 of the complaint.

2. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 2 of the complaint.

3. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 3 of the complaint.

4. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 4 of the complaint except admits on information and belief that defendant PARABOLA SHIPPING (UK) LTD. subchartered from defendant SANKO STEAMSHIP CO. LTD. and that defendant HIMOFF MARITIME ENTERPRISES, LTD. subchartered the vessel to defendant MARDOFF PEACH LTD.

5. Deny the allegations contained in Paragraph 5 of the complaint.

6. Deny the allegations contained in Paragraph 6 of the complaint.

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8. Deny the allegations contained in Paragraph 8 of the complaint.

9. Deny the allegations contained in Paragraph 9 of the complaint.

10. Deny knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 10 of the complaint.

AS AND FOR AN AFFIRMATIVE DEFENSE DEFENDANTS PARABOLA SHIPPING (UK) LTD. AND HIMOFF MARITIME ENTERPRISES, LTD. ALLEGE AS FOLLOWS:

11. Neither PARABOLA SHIPPING (UK) LTD. nor HIMOFF MARITIME ENTERPRISES, LTD. has a contractual relationship with the plaintiff nor have they agreed in writing to arbitrate with the plaintiff. No demand for arbitration has been made by THE SANKO STEAMSHIP CO., LTD. with whom defendant PARABOLA SHIPPING (UK) LTD. has agreed to arbitrate disputes.

AS AND FOR A CROSS CLAIM BY PARABOLA SHIPPING (UK) LTD. AND HIMOFF MARITIME ENTERPRISES, LTD. AGAINST DEFENDANT MARDORF PEACH LTD. IT IS ALLEGED ON INFORMATION AND BELIEF AS FOLLOWS:

12. That at all relevant times MARDORF PEACH LTD. was subcharterer of the M.V "AGIA ERINI II" from HIMOFF

MARITIME ENTERPRISES, LTD. Said Charter Party entered into in the City of Montreal on September 13, 1974 is identical in all relevant details to Charter Party entered into with PARABOLA SHIPPING (UK) LTD. and SANKO STEAMSHIP CO., LTD.

13. Plaintiff's complaint further alleges that as a result of defendants' negligence and breach of warranty, plaintiff's vessel suffered damages amounting to about $2,700,000.00.

14. If HIMOFF MARITIME ENTERPRISES, LTD. or PARABOLA SHIPPING (UK) LTD. should be held liable to plaintiff for negligence and/or breach of charterparty warranty, which liability is expressly denied, such liability will have been brought about and caused by the negligence and/or breach of warranty of defendant MARDOFF PEACH LTD.

15. If as a result of the matters alleged in the complaint (attached hereto) and in this answer HIMOFF MARITIME ENTERPRISES, LTD. or PARABOLA SHIPPING (UK) LTD. is held liable to plaintiff for any or all damages alleged then defendant MARDOFF PEACH LTD. is liable to indemnify HIMOFF MARITIME ENTERPRISES, LTD. and/or PARABOLA SHIPPING (UK) LTD. together with attorney's fees.

WHEREFORE, defendants PARABOLA SHIPPING (UK) LTD. and HIMOFF MARITIME ENTERPRISES, LTD. demand:

1. Judgment be entered dismissing the complaint of the plaintiff against defendants HIMOFF MARITIME ENTERPRISES, LTD. and PARABOLA SHIPPING (UK) LTD. with costs and disbursements of this action.

2. That in the event judgment is rendered in favor of plaintiff, that such judgment be entered against defendant MARDOFF PEACH LTD. for all damages plus interest

and costs.

3. That in the event judgment is entered against PARABOLA SHIPPING (UK) LTD. and/or HIMOFF MARITIME ENTERPRISES, LTD. that PARABOLA SHIPPING (UK) LTD. and/or HIMOFF MARITIME ENTERPRISES, LTD. have judgment over and indemnity as against MARDOFF PEACH LTD. plus interest, costs and disbursements and attorney's fees.

4. In the event arbitration is ordered to commence between PARABOLA SHIPPING (UK) LTD. and any other party or HIMOFF MARITIME ENTERPRISES, LTD. and any other party that arbitration also be ordered by the court as between HIMOFF MARITIME ENTERPRISES LTD. and MARDOFF PEACH LTD. pursuant to their Charter Party agreement dated September 13, 1974 and attached hereto as Exhibit "A".

5. Such other and further or different relief as may be just.

Dated: New York, New York
May 22, 1975.

VINCENT, BERG, RUSSO,
MARCIGLIANO & ZAWACKI
Attorneys for Defendants
PARABOLA SHIPPING (UK) LTD.
and HIMOFF MARITIME ENTERPRISES, LT
127 John Street
New York, New York 10038

BY _____
FRANK M. MARCIGLIANO
Member of Firm.

BEST COPY AVAILABLE

TELEPHONE 849 9191
TELEX 01 2795

SCANDIA SHIPPING AGENCIES LTD.
STEAMSHIP AGENTS AND BROKERS
Head Office: 231 St. James Street
Montreal H2Y 2B3, Que. - Canada

CABLE ADDRESS SCASHIP
TWX 610 421 2027
CARGO [illegible] INC.
[illegible] MADISON AVE.
NEW YO[illegible] 10022

ORIGINAL Time Charter

GOVERNMENT FORM

Approved by the New York Produce Exchange

November 6th, 1913—Amended October 20th, 1921; August 6th, 1931; October 3rd, 1946

This Charter Party, made and concluded in Montreal 13th day of September 1974

Between MIKOFF MARITIME ENTERPRISES SA of

Owners of the good... Gronk (Name) (Nationality) "AGIA TRINI II" of

tons gross register, and tons net register, having engines of indicated horse power

and with hull, machinery and equipment in a thoroughly efficient state, and classed American Bureau

at of about cubic feet bale capacity, and about 31,000 tons of 2,240 lbs.

deadweight capacity (cargo and bunkers, including fresh water and stores not exceeding [illegible] on a draft of 35 feet 1-1/8 inches on Summer freeboard, inclusive of permanent bunkers,

which are of the capacity of about tons of fuel, and capable of steaming, fully laden, under good weather

conditions about 15 knots on a consumption of about 37 tons of best [illegible]

now loading

and Metzorff Beach Company Limited Charterers of the City of London

Witnesseth, That the said Owners agree to let, and the said Charterers agree to hire the said vessel, from the time of delivery, for

about one time quarter trip via Churchill, Manitoba and St. Lawrence/East Coast Canada

and/or Chesapeake or U.S. north of Hatteras, first port of within below mentioned trading limits,

Charterers to have liberty to subst the vessel for all or any part of the time covered by this Charter, but Charterers remaining responsible for

the fulfilment of this Charter Party.

Vessel to be placed at the disposal of the Charterers, at on dropping outward sea pilot, Hamburg.

in bulk, explosive, [illegible] nitrate, acids, arms, ammunition, nuclear materials, and all other injurious, dangerous or inflammable cargo

mahogany logs, livestock, asphalt, pi ch

excluded.

Charterers privilege trade outside International Warranty Limits. Charterers to pay extra insurance incurred thereby, actual, always within International Trading Limits as presently constituted, Cuba, Israel and Great Lakes always

daily or pro-rata including overtim

(See Cl.)

DOLLARS FIFTY

(U.S.$)

Lump Sum Compensation for the use and hire of the said vessel for the period of time aforesaid, including bunkers and

all other consumables, but excluding port charges, pilotage, light dues, canal tolls, agency commissions, and

commissions on the Owners' total hire earnings, at the rate of

per ton per calendar month, commencing on and from the day of delivery as aforesaid, and at and after the same rate for any part of a month; hire to continue until the hour of the day of redelivery in like good order and condition, ordinary wear and tear excepted, to the Owners (or their Agents) at

option, any safe port U.K. or in Charterers' option, any safe port

Continental Hamburg range.

Charterers are to have the use of any vessel's lifeboats for all hands, but same to be returned in like condition.

Owners to keep vessel's lights as required by Regulations for preventing collisions at sea.

Charterers are to pay for the use of the vessel at the rate aforesaid for the time actually lost in discharging by reason of short delivery, or in consequence of the vessel's detention by average accidents to her hull, machinery or equipment during the service hereby contemplated, or by reason of refusal or neglect of the Master to sign Bills of Lading as presented in accordance with Mate's receipts, or to prosecute her voyage with the utmost dispatch, or by deviation, unless such deviation be made for the purpose of saving life or property only.

Charterers are to have the option of keeping the vessel up to and including the date of redelivery under the conditions of this Charter Party for any additional period not exceeding

A.R.A./Hamburg range; Charterers to pay all outward expenses

approximate

5 days final notice together with final redelivery port.

Charterers are to have the option of keeping the vessel for any additional period not exceeding

Charterers are to have the option of canceling this Charter Party at any time not later than

Owners shall have a lien upon all cargoes and all sub-freights for any amounts due under this Charter, and Charterers shall have a lien on the vessel for all moneys paid in advance and not earned, and any overpaid hire or expenses not applied.

Should the vessel be lost, Owners shall not be responsible to Charterers, except that Charterers shall be entitled to a proportionate return of hire paid in advance, calculated from the date of loss.

For the purpose of this Charter Party the word "Owners" is to be understood as meaning the Owners or the Disponent Owners as the case may be.

The Captain shall prosecute his voyages with the utmost dispatch and shall render all customary assistance with the vessel's crew. The Captain (although employed and paid by the Owners) shall be under the orders and directions of the Charterers as regards employment and agency; and Charterers are to indemnify the Owners against all consequences or liabilities that may arise from the Captain signing Bills of Lading or other documents or otherwise complying with such orders or directions; Charterers are to load, stow, trim, lash, secure, dunnage, and discharge the cargo at their expense under the supervision of the Captain, who is to keep a full and correct account of the cargo received or delivered. Charterers are to provide and pay for all tally clerks, stevedores, winchmen and other labour, including shifting boards, as required for the proper and safe loading and discharging and for dunnage mats, shifting boards, tarpaulins and ropes necessary for the vessel's protection, also for the use of the vessel's pumps in connection with the cleaning of the vessel's holds after the discharge of cargo. Should the vessel's crew be employed in any of the above work, Charterers are to pay the Owners the actual cost of such labour.

Charterers are to pay for all fuel used by the vessel's donkey boiler, including galley fires, at the current price at the ports where such fuel is taken on board.

Charterers are to have the option of using the vessel's derricks capable of handling lifts of not more than the ship's tackle can safely handle, but Charterers are to pay for any additional gear required.

Charterers are to have the option of using the vessel's refrigerating machinery and insulated cargo spaces, if any, but Charterers are to pay for any additional insurance premium and for any loss of time or damage to the vessel arising from the use of the refrigerating machinery.

Charterers are to have the option of using the vessel's passenger accommodation, but Charterers are to pay for any additional insurance premium and for any loss of time or damage to the vessel arising from the use of the passenger accommodation.

Charterers are to have the option of using the vessel's steam for cargo purposes, but Charterers are to pay for any loss of time or damage to the vessel arising from the use of the steam for cargo purposes

wear and tear excepted, to the Owners (unless lost) at ... unless otherwise mutually agreed. Charterers are to give Owners not less than ... days' notice of vessel's expected date of re-delivery, and probable redelivery range. Charterers further to ... days, ... days, ... days and ... days' notice of vessel's expected date of re-delivery, and probable redelivery range.

option, and safe port.

b. Payment of said hire to be made in New York in cash in United States currency, semi-monthly in advance, and for the last half month or part of same the approximate amount of hire, and should same not cover the actual time, hire is to be paid for the balance day by day, as it becomes due, if so required by Owners, unless bank guarantee or deposit is made by the Charterers with their bankers for the due payment of the hire, or bank guarantee, or on any breach of this Charter Party, the Owners shall be at liberty to withdraw the vessel from the service of the Charterers, without prejudice to any claim they (the Owners) may otherwise have on the Charterers. Cash for ordinary disbursements at any port may be advanced as required by the Captain, by the Charterers or their Agents, subject to 2½ commission and such advances shall be deducted from the hire. The Charterers, however, shall in no way be responsible for the application of such advances.

c. The cargo or cargoes to be laden and discharged in any dock or at any wharf or place that Charterers or their Agents may direct, provided the vessel can safely lie always afloat at any time of the ... (See Cl. 4 and 31)

2. That the whole reach of the Vessel's Hold, Decks, and usual places of loading (not more than she can reasonably stow and carry), also accommodation for Supercargo, if carried, shall be at the Charterers' ... and the Captain shall prosecute his voyages with the utmost despatch, and render customary assistance with the vessel's crew and boats. The Captain (although appointed by the Owners) shall be under the orders and directions of the Charterers as regards employment and agency; and Charterers are to load, stow, trim, lash, unlash, secure, dunnage, and discharge the cargo at their risk and expense, under the supervision of the Captain, who is to sign Bills of Lading for ... as presented, in accordance with the mate's receipts. Charterers are not responsible for the ... of the Captain or crew in navigating the vessel or in the management of her, unless the same arise from want of due diligence on the part of the Owners or their Managers to make the vessel seaworthy, or to properly man, equip and supply her.

3. That the Charterers shall furnish the Captain from time to time with all requisite instructions and sailing directions, in writing, and the Captain shall keep a full and correct log of the voyage or voyages, which are to be kept open to the Charterers or their Agents, and furnish the Charterers, their Agents or Supercargo, when required, with a true copy of daily logs, showing the course of the vessel and distance run and the consumption of fuel.

4. That the Captain shall use diligence in caring for the ventilation of the cargo.

5. ... a period of ...

6. That if required by Charterers, time not to commence before ... September 19, 1974 ... and should ... not have been vessel's readiness to load as aforesaid before ... September 23, 1974 ... but not later than 4 p.m. Charterers ... their option, to cancel this Charter at any time not later than the day of vessel's readiness.

7. That should the vessel be lost, money paid in advance and not earned (reckoning from the date of loss or being last heard of) shall be returned to the Charterers at once. The act of God, enemies, fire, restraint of Princes, Rulers and People, and all dangers and accidents of the Seas, Rivers, Machinery, Boilers and Steam Navigation, and errors of Navigation throughout this Charter Party, always mutually excepted.

8. That the vessel shall have the liberty to sail with or without pilots, to tow and to be towed, to assist vessels in distress, and to deviate for the purpose of saving life and property.

9. That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men.

10. That the Owners shall have a lien upon all cargoes and all sub-freights for any amounts due under this Charter, including General Average contributions, and the Charterers to have a lien on the ship for all moneys paid in advance and not earned, and any overpaid hire or expenses not repaid to them at once. Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents which might have priority over the title and interest of the owners in the vessel.

11. That all derelicts and salvage shall be for Owners' and Charterers' equal benefit after deducting Owners' and Charterers' expenses and Crew's proportion. General Average shall be adjusted, stated and settled according to Rules 1 to 15, inclusive, 17 to 22, inclusive, and Rule F of York-Antwerp Rules 1950 at such port or place in the United States as may be selected by the carrier, and as to matters not provided for by these Rules according to the laws and usages at the port of New York. In such adjustment due allowance in favor of each interest contributing shall be made for all extraordinary sacrifices or losses, but no allowance shall be made for repairs to vessel which have been made necessary by latent defects or unseaworthiness. Such deposits as may be required by the carrier, or its agents, to secure the estimated contribution of the vessel and her freight, and of the cargo and all other interests, and any additional deposits found necessary from time to time during the voyage, shall be paid to the carrier, or its agents, by the respective parties liable to contribute, as customary in the ports where the vessel may happen to be. In the event of accident, danger, damage or disaster before or after commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible by statute, contract or otherwise, the goods, the shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier may require shall be paid to the carrier as security for the payment of the contribution to general average and salvage and special charges thereon due from the goods, which deposit shall, if required, be made in cash in United States dollars at the rate of exchange prevailing on the day of payment, as fixed by the carrier. Average agreement or bond and such security as the carrier may require shall be signed and delivered by the consignees of the goods before delivery of the goods, whether called upon to do so before or after the completion of discharge of the vessel at destination. When so required, the value of the goods shall be declared by the shippers in a special clause in the bill of lading, and the extra freight based on such declared value shall be paid before the goods are shipped. Such declaration shall not limit the liability of the carrier in any way whatsoever except as to the value of the goods for general average purposes. Average shall be payable in the money of the place where the adjustment is made, based on the values of the property at the time and place of discharge from the vessel, or, if the property is not discharged, at the time when the voyage ends. In the event of the vessel being condemned or not proceeding on the voyage, average shall be adjusted as if the voyage had been completed, and the basis of values shall be fixed accordingly. The proportion of the general average and salvage payable by the cargo shall be based upon the gross sound value of the goods at the time and place of discharge, including freight, insurance premium and landing charges, unless sold short of destination, in which case the basis shall be the net proceeds of sale. Any allowance for sacrifices shall be made before the deduction of primage and Agents' commission. Any deduction from the value of the goods on account of damage or otherwise shall be disregarded. Fuel used by the vessel while at a port of refuge, and cost of handling, storing and forwarding cargo at such port of refuge, shall be allowed in general average. Fuel and stores shall be valued at the current market price at the time and place of their use. Provisions and wages shall not be allowed in general average unless the vessel has been detained in port for more than five days, in which case they shall be allowed for the whole period of detention. Deck cargo shall contribute to general average. Cash advanced and interest thereon shall be allowed in general average. Commissions payable on freight shall not be allowed in general average. Extra compensation to officers and crew shall not be allowed in general average. Provisions and wages shall not be allowed in general average unless the vessel has been detained in port for more than five days, in which case they shall be allowed for the whole period of detention. Deck cargo shall contribute to general average. Cash advanced and interest thereon shall be allowed in general average. Commissions payable on freight shall not be allowed in general average. Extra compensation to officers and crew shall not be allowed in general average.

12. ... to General Average in accordance with the above are to be included in all bills of lading issued hereunder.

13. ... by the vessel while at the ... also for ... condensing water, or for ... allowed to be agreed to as to quantities, and the cost of ... to be agreed by Owners.

14. ... shall ... the vessel ... Owners ... to provide ... on the vessel lanterns and oil for same, and vessel to give use of electric light when so fitted, but any additional lights over those on board to be at Charterers' expense. The Charterers to have the use of any gear on board the vessel.

15. ... Vessel to work night and day, if required by Charterers, and all winches to be at Charterers' disposal during loading and discharging. Charterers agreeing to pay officers, engineers, winchmen, stevedores, such overtime as may be customary at the port, and to pay for all ... per hatch to work ... as required, Charterers agreeing to pay officers, engineers, winchmen, deck hands and ... for overtime work done in accordance with ... Should the vessel's winches be insufficient or ... in part, or if ... unions, prevent crew from driving winches, shore Winchmen to be paid by Charterers. In the event of a disabled winch or winches or insufficient power to operate winches, Owners to pay for shore engine, or engines, in lieu thereof, if required, and pay any loss of time occasioned thereby.

16. ... See Clause 4

17. It is also mutually agreed that this Charter is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States approved on the 13th day of February, 1893, and entitled "An Act relating to Navigation of Vessels, etc." in respect of all cargo shipped under this charter to or from the United States of America. It is further subject to the following clauses both of which are to be included in all bills of lading issued hereunder:

U. S. A. Clause Paramount

This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading is repugnant to said Act to any extent, such term shall be void to that extent, but no further.

18. ...

19. ...

20. ...

21. ...

22. ...

23. ...

24. ...

25. The vessel shall not be required to enter any icebound port, or any port where lights or light-ships have been or are about to be withdrawn by reason of ice, or where there is risk that in the ordinary course of things the vessel will not be able on account of ice to safely enter the port or to get out after having completed loading or discharging.

26. Nothing herein stated is to be construed as a demise of the vessel to the Time Charterers. The owners to remain responsible for the navigation of the vessel, insurance, crew, and all other matters, same as when trading for their own account.

27. A commission of 1-1/4 per cent is payable by the Vessel and Owners to SCANDIA SHIPPING AGENCIES LIMITED 1-1/4% to Cargo Chartering and 2-1/2% to Inparma Shipping (Antwerp) N.V. on hire earned and paid under this Charter, and also upon any continuation or extension of this Charter.

28. An address commission of 2½ per cent payable to ... on the hire earned and paid under this Charter.

Payable authority from

Clauses Nos. 29 through 30 are attached hereto, are to be considered as incorporated in this Charter Party.

The original Charter Party in our possession is with SCANDIA SHIPPING AGENCIES LIMITED

Brokers

as agents to charterers

As ... Owners ... Party.

FOR MIMOFF MARITIME ENTERPRISES, LTD.

RIDER TO CHARTER PARTY DATED MONTREAL, SEPTEMBER 13TH, 1974 - M.V. "AGIA ERINI II"

Clause 29: Bunkers on delivery and redelivery as on board, approximately the same quantities both ends. Same prices to apply for delivery and redelivery, i.e. U.S. DOLLARS SEVENTY-FIVE ($75.00) per long ton for I.F.O. and U.S. DOLLARS ONE HUNDRED AND TEN ($110.00) per long ton for diesel. Charterers privilege to bunker vessel at Hamburg for their account while discharging, provided it does not interfere with the discharging. Owners privilege to bunker for their account at the port of redelivery, provided it does not interfere with the discharging.

Clause 30: Charterers are not to be responsible for stevedore or other damage to the vessel unless notified in writing by the Master at time of occurrence of damage. Master is to cooperate with Charterers and Agents in giving prompt notice of claim in writing to party causing damage.

Clause 31: Hire to be remitted to: -

Himoff Maritime Enterprises Limited

Account: 121-101-0742

With the Chase Manhattan Bank,
120 World Trade Centre Concourse,
New York

Attention: Mr. Charles Keeler, Vice President

And to immediately full rate cable advise Beneficiary through Chase Manhatten Bank, 120 World Trade Centre Concourse, New York, with value date same date as remittance.

Clause 32: Vessel's Description: (Particulars all about)

M.V. "AGIA ERINI II"

- Greek Flag
- Built 1970
- 31,904 total deadweight
- 35 feet 1.1/8 inches draft
- 1,361,054 cubic feet grain
- plus 147,924 cubic feet in bleeding wingtanks
- 6 holds/6hatches
- 12 X 5 tons winches/derricks; t.p.i. 100
- 599 feet 1 inch length overall
- 84 feet 00 inches beam

Clause 33: New Jason Clause; New Both-to Blame Collision Clause; Chamber of Shipping War Risks Clauses Nos. 1 and 2, are to be considered part of this Charter Party and are to be included in Bills of Lading issued hereunder.

Clause 34: Charterers to reimburse Owners with an amount upto $27,000.00 towards extra insurance assessed by the Underwriters, for trading Churchill. Owners eventually to support such extra insurance by Underwriters' invoice. Any excess over $27,000.00 is to be absorbed by the Owners.

Exhibit A

27a

RIDER TO CHARTER PARTY DATED MONTREAL, SEPTEMBER 13TH, 1974 - M.V. "AGIA ERINI II"

Clause 35: Vessel to be left in safe seaworthy trim to Master's satisfaction for shifting between loading ports.

Clause 36: It is understood vessel is approved for grain loading without fittings and carry ore in alternate holds.

Clause 37: An on-hire survey is to be held at Hamburg by impartial surveyor who will submit his survey report to both parties. At the redelivery port, a survey is to be held also in the aforementioned manner. Time and expenses for the survey to be borne equally.

Clause 38: Cost of radiograms sent by vessel for Time Charterers behalf to be for Charterers account.

NEW JASON CLAUSE. In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if such salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery.

BOTH TO BLAME COLLISION CLAUSE. If the liability for any collision in which the vessel is involved while performing this Bill of Lading falls to be determined in accordance with the laws of the United States of America, the following clause shall apply:—

If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owner of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier.

The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

WAR RISKS CLAUSE. "1. No Bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaded after Bills of Lading have been signed, or if the port to which the ship has been ordered to discharge either on signing Bills of Lading or thereafter be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the owner shall discharge the cargo at any other port covered by this Charterparty as ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered."

"2. The ship shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the vessel sails or any department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person having, under the terms of the War Risks Insurance on the ship, the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done, the same shall not be deemed a deviation, and delivery in accordance with such orders or directions shall be a fulfilment of the contract voyage and the freight shall be payable accordingly." (C.S.U.K., London—26th September,

TIME CHARTER DATED DECEMBER 18, 1969
BETWEEN CONSTELLATION MARITIME AGENCIES,
INC. AS AGENTS FOR OWNERS AND EMERALD
SHIPPING CORPORATION, CHARTERERS.

REPRODUCED AT P. 12a

RIDER TO TIME CHARTER PARTY DATED NEW YORK, N.Y., DECEMBER 18th, 1969 FOR THE m/s "AGIA FRINI II"

29. When vessel leaves yard, same will consume for first 36 hours:

	Marine Diesel
36 hrs. - 14 days	IFO 400
15/30 days	IFO 1000
From there on	IFO 1200

Differential of price of bunkers between bunkers as outlined above and IFO 1200 will be for Owner's account.

Bunkers on redelivery sufficient to reach nearest bunkering installation. Bunker price at Charterers' current contract price at redelivery, if Vessel bunkers after delivery same to be at Charterers' current contract price.

30. Charterers' privilege to take on bunkers prior to delivery at Owner's time, provided this does not interfere in any way with activities at the yard.

31. Owners warrant that this vessel or any other controlled vessel has not called Cuba or North Vietnam ports or place after January 1,1962, nor will enter any such port or place prior to completion of loading under this charter party.

32. It is understood Vessel is approved for grain without fittings and can carry ore in alternate holds.

33. An on-hire survey is to be held at the delivery port by an impartial surveyor who will submit a survey report to both parties. At the redelivery port, a survey is to be held also in the aforementioned manner. Time and expenses for the survey to be borne equally.

34. Charterers are not to be responsible for stevedore or other damage to the Vessel unless notified in writing by the Master at time of occurence of damage; Master is to cooperate with Charterers and Agents in giving prompt notice of claim in writing to party causing damage.

35. New Jason Clause, New Both-To-Blame Collision Clause, Chamber of Shipping War Risk Clauses No. 1 and 2, and Canadian Clause Paramount, are to be considered part of this charter party and are to be included in Bills of Lading issued hereunder.

36. Charterers have the privilege of flying their house flag and painting their markings on Vessel's funnel and are to restore marking before redelivery at Charterers' time and expense.

37. Cost of radiograms sent by Vessel on Timecharterers' behalf to be for Charterers' account.

ment of the voyage resulting from any clause whatsoever, whether due to negligence or not, for which or for the consequences of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be or incurred, and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if such salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery.

NEW BOTH-TO-BLAME COLLISION CLAUSE

If the liability for any collision in which the vessel is involved while performing this Bill of Lading fails to be determined in accordance with the laws of the United States of America, the following clause shall apply:

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, Mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the Owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her Owners insofar as such loss or liability represents loss of or damage to or any claim whatsoever of the Owners of said goods paid or payable by the other or non-carrying ship or her Owners to the Owners of the said goods and set off, recouped or recovered by the other or non-carrying ship or her Owners as part of their claim against the carrying ship or Carrier"

The foregoing provisions shall also apply where the Owners, Operators or those in charge of the ship or ships objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contract.

WAR RISK CLAUSES

1. No Bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaded after Bills of Lading have been signed, or if the port to which the ship has been ordered to discharge either on signing Bills of Lading or thereafter be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the Owner shall discharge the cargo at any other port covered by this charter party is ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above-mentioned), and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered.

2. The ship shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the vessel sails or any department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person having, under the terms of the War Risk Insurance on the ship, the right to give such orders or directions and if by reason of and in compliance with any such order or directions anything is done or is not done, the same shall be deemed a deviation and delivery in accordance with such orders or direction shall be a fulfilment of the contract voyage and the freight shall be payable accordingly.

CANADIAN CLAUSE PARAMOUNT

This Bill of Lading, so far as it relates to the carriage of goods by water, shall have effect, subject to the provisions of the Water Carriage of Goods Act, 1936, enacted by the Parliament of the Dominion of Canada, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under the said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such term shall be void to that extent but no further.

BEST COPY AVAILABLE

ADDENDUM NO I

Referring to Charter Party dated New York, December 18, 1969 between Constellation Maritime Agencies, Inc. as Agents for Owners of "AGIA ERINI II" and Emerald Shipping Corporation

IT IS HEREBY MUTUALLY UNDERSTOOD AND AGREED THAT:

In terms of the insertion in line 10 the following final specifictions have been established:

Freeboard (Summer):	13'-11 1/2
Full Load Draft (Summer) MLD:	35'-00 1/4
Full Load Draft (Summer) EXT:	35'-01 1/8
Full Load Displacement:	39,249 LT
Light Weight:	7,345 LT
Dead Weight:	31,904 LT
Registered Net Tonnage:	12,645 Tons
Registered Gross Tonnage:	18,628.12 Tons
Length Overall:	599'.01"
Moulded Breadth:	83' 11 7/8"
Moulded Depth:	48' 10 5/8"
Speed:	About 14.7 Knots
Consumption:	About 39/40 Tons IFO 1200 Seconds and 2 Tons Diesel Oil

All other terms, conditions, exceptions of said Charter Party to remain unaltered and in full force and effect.

EMERALD SHIPPING CORPORATION
BY: GOTAAS-LARSEN, INC.
AS AGENTS ONLY

VICE PRESIDENT

(G-L #27)

September 18, 1970

ADDENDUM NO. 2

Referring to Timecharter Party dated New York, New York, December 18, 1969, for the m/s "AGIA ERINI II" between CONSTELLATION MARITIME AGENCIES, INC., As Agents For Owners and EMERALD SHIPPING CORPORATION, Charterers,

IT IS HEREBY MUTUALLY UNDERSTOOD AND AGREED THAT:

1) Charterers exercise their option in accordance with lines 14/15 of the above charter party.

2) The above charter is converted into a timecharter of minimum 48 months maximum 50 months duration.

3) The average rate of hire payable for this period counting retroactively to the delivery of the ship on 4/30/1970 will be $3.50 per ton.

4) Charterers will pay the revised rate of $3.5872091 for the remaining time of the charter party commencing 9/30/1970.

All other terms, conditions, exceptions and addenda thereto of said charter party to remain unaltered and in full force and effect.

EMERALD SHIPPING CORPORATION
BY: GOTAAS-LARSEN, INC.
AS AGENTS ONLY

Robert W. Tyd

Robert W. Tyd-Vice-President

CONSTELLATION MARITIME AGENCIES INC
AS AGENTS FOR OWNERS

Theodore Tsagaris

33a

SKAARUP CHARTERING CORPORATION

21 WEST STREET

NEW YORK, N. Y. 10006

January 3, 1972
(G-L #27)

ADDENDUM NO. 3

Referring to Timecharter Party dated New York, New York December 18, 1969, for the M/S "AGIA ERINI II" between CONSTELLATION MARITIME AGENCIES, INC., As Agents For Owners and EMERALD SHIPPING CORPORATION, Charterers,

IT IS HEREBY MUTUALLY AGREED AND UNDERSTOOD THAT:

As of the termination of the current voyage (presently expected to be about January 28, 1972) Gotaas Larsen A/S Oslo is hereby substituted for Emerald Shipping Corporation, Liberia, as Charterers.

All other terms, conditions, exceptions and addenda thereto of said charter party to remain unaltered and in full force and effect.

MERALD SHIPPING CORPORATION
: GOTAAS-LARSEN, INC.
AGENTS ONLY

bert W. Tyd, Vice-President

OTAAS-LARSEN A/S

olf Pettersen, Man. Director

CONSTELLATION MARITIME AGENCIES, Inc.
As Agents for Owners

34a

SKAARUP CHARTERING CORPORATION

475 STEAMBOAT ROAD

GREENWICH, CONN. 06830

CABLE ADDRESSES
"SKAPCHART" GREENWICH, CONN.
"SKARTANK"

May 25, 1973

G-L #27

ADDENDUM NO. IV

Referring to Timecharter Party dated New York, New York December 18, 1969, for the m/s "AGIA ERINI II" between CONSTELLATION MARITIME AGENCIES, INC. as Agents for Owners and GOTAAS LARSEN A/S Oslo, Charterers.

IT IS HEREBY MUTUALLY UNDERSTOOD AND AGREED THAT:
Effective June 1, 1973

1) The period covered by this charter party will be extended for six (6) years two (2) months more or less at Charterers option as of June 1, 1973.

2) Hire to be paid at the rate of U.S. dollars four ($4.00) per dead weight ton per calendar month as of June 1, 1973.

3) Overtime - U.S. dollars one thousand ($1,000.00) per calendar month as of June 1, 1973.

4) Lines 32 thru 34 - of charter party to be amended to read "within institute warranty limits (as presently constituted or as may be widened in the future) excluding Cuba, Isreal, North Vietnam and North Korea (unless circumstances should be normalized during charter period) also excluding Great Lakes".

5) Line 147 - of charter party right hand margin delete "cleaning of holds".

All other terms, conditions, exceptions of said charter party to remain unaltered and in full force and effect.

GOTAAS-LARSEN, INC., as Agents
for and on behalf of
GOTAAS-LARSEN A/S

Robert W. Tyd, Vice President

Constellation Maritime Agencies Inc
As Agents for Owners
Theodore Kargan

GOTAAS - LARSEN, INC.
SHIP OPERATORS, AGENTS AND BROKERS
122 EAST 42ND STREET, NEW YORK, N. Y. 10017
PHONE: 212 697-9710

CABLE: GOLARSHIP
ITT: 422014

TELEX: 234329
TWX: 212-640-4091

35a

"AGIA ERINI II"
Charter Party dated December 18, 1969

G-L #27

LETTER OF ASSIGNMENT
dated February 22, 1974

GOTAAS-LARSEN A/S, Time-Chartered Owners, agrees to relet to EMERALD SHIPPING CORPORATION (LIBERIA), Charterers, the above-captioned vessel for about one year in Charterers' option commencing February 25/March 25, 1974, delivery in Portugal and redelivery UK/Continent.

All other rates, terms, and conditions of this Charter Party and Addenda thereto are to remain unaltered and in full force and effect.

GOTAAS-LARSEN A/S
GOTAAS-LARSEN, INC., as Agents

Robert W. Tyd, Vice President

EMERALD SHIPPING CORPORATION (LIBERIA)

Louis V. Krall, Attorney-in-Fact

G-L #465

Form 138 Printed in U.S.A. and Sold by Cruz & Co. Inc., 21 Beaver St., New York

Time Charter

GOVERNMENT FORM

Approved by the New York Produce Exchange

November 6th, 1913—Amended October 20th, 1921; August 6th, 1931; October 3rd, 1946

This Charter Party, made and concluded in New York 22nd day of February 1974

Between EMERALD SHIPPING CORPORATION As Timecharterod

Owners of the good Greek { Steamship / Motorship } "AGIA ERINI II" xx built 1970

of 18,625 tons gross register, and 12,695 tons net register, having engines of indicated horse power

and with hull, machinery and equipment in a thoroughly efficient state, and classed AB

at of about 1,361,054 cubic feet bale capacity and about 31,904 tons of 2240 lbs.

deadweight capacity cargo and bunkers, including fresh water and stores not exceeding xxxx

Clerks, Stevedore's Foreman, etc., Charterers paying at the xxxxxxxxx per meal for all such victualling of Ships.

11. That the Charterers shall furnish the Captain from time to time with all requisite instructions and sailing directions, in writing, and the Captain shall keep a full and correct Log of the voyage or voyages, which are to be patent to the Charterers or their Agents, and furnish the Charterers, their Agents or Supercargo, when required, with a true copy of daily Logs, showing the course of the vessel and distance run and the consumption of fuel.

12. That the Captain shall use diligence in caring for the ventilation of the cargo.

13. xxxxxxxx

RIDER TO M/V "AGIA ERINI II" CHARTER PARTY DATED FEBRUARY 22, 1974

29. Owners warrant that this vessel has not called Cuba or North Vietnam after January 1, 1962, nor will enter any such port or place prior to delivery under this Charter Party.

30. It is understood vessel is approved for grain without fittings and can carry ore in alternate holds.

31. An on-hire survey is to be held at the delivery port by an impartial surveyor who will submit a survey report to both parties. At the re-delivery port, a survey is to be held also in the aforementioned manner. Time and expenses for the survey to be borne equally.

32. Charterers are not to be responsible for stevedore or other damage to the vessel unless notified in writing by the Master at time of occurrence of damage; Master is to cooperate with Charterers and Agents in giving prompt notice of claim in writing to party causing damage.

33. New Jason Clause, New Both-to-Blame Collsion Clause, Chamber of Shipping War Risk Clauses Nos. 1 and 2, and Canadian Clause Paramount, are to be considered part of this Charter Party and are to be included in Bills of Lading issued hereunder.

34. Charterers have the privilege of flying their house flag and painting their markings on vessel's funnel and are to restore marking before redelivery at Charterers' time and expense.

35. Cost of radiograms sent by vessel on Timecharterers' behalf to be for Charterers' account.

36. Vessel's description:

AGIA ERINI II - Greek Flag - Built 1970.
All particulars about:
31904 TDW on 35'1-1/8"
1361,054 cbft grain plus 147,928 in bleeding wingtanks
15 knots on 40 tons IFO (1200 secs.) plus 2 D.O.
6 Holds/6 Hatches
12 Derricks at 5 tons each
LOA - 599'1"
Beam - 84'
TPI - 100

BEST COPY AVAILABLE

NEW JASON CLAUSE:

In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the Carrier is not responsible by statute, contract or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the Carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully as if such salving ship or ships belonged to strangers. Such deposit as the Carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the Carrier before delivery.

NEW BOTH TO BLAME COLLISION CLAUSE:

If the liability for any collision in which the vessel is involved while performing this Bill of Lading fails to be determined in accordance with the laws of the United States of America, the following clause shall apply:

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier."

The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision

AGIA ERINI II - Greek Flag - Built 1970
All particulars about: 38a
31904 TDW on 35'1-1/8"
2361,034 cbft grain plus 147,928 in bleeding wingtanks
15 knots on 40 tons IFO (1200 secs.) plus 2 D.O.
6 Holds/6 Hatches
12 Derricks at 5 tons each
LOA - 599'1"
Beam - 84'
TPI - 100

NEW JASON CLAUSE:

In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the Carrier is not responsible by statute, contract or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the Carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully as if such salving ship or ships belonged to strangers. Such deposit as the Carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the Carrier before delivery.

NEW BOTH TO BLAME COLLISION CLAUSE:

If the liability for any collision in which the vessel is involved while performing this Bill of Lading falls to be determined in accordance with the laws of the United States of America, the following clause shall apply:

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier."

The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

WAR RISK CLAUSES:

1. No Bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaded after Bills of Lading have been signed, or if the port to which the ship has been ordered to discharge either on signing Bills of Lading or thereafter be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the owner shall discharge the cargo at any other port covered by this Charterparty as ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered.

2. The ship shall have liberty to comply with any orders or directions as to the departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the vessel sails or any department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person having, under the terms of the War Risks Insurance on the ship, the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done, the same shall not be deemed a deviation, and delivery in accordance with such orders or directions shall be a fulfillment of the contract voyage and the freight shall be payable accordingly.

C.S.U.K., London - 26th September, 1935.

Canadian Clause Paramount

This Bill of Lading, so far as it relates to the carriage of goods by water, shall have effect, subject to the provisions of the Water Carriage of Goods Act, 1936, enacted by the Parliament of the Dominion of Canada, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under the said Act. If any term of this Bill of Lading be repugnant to said Act to any extent, such terms shall be void to that extent but no further.

Form 1A - Printed in U.S.A. and Sold by The Baltic and Mercantile Shipping Exchange, 24 Leonard St., New York 13, N.Y.

PEBACO CHARTERING CORPORATION
SHIP BROKERS & AGENTS
17 Battery Place, New York, N.Y. 10004

Time Charter

GOVERNMENT FORM

Approved by the New York Produce Exchange

November 6th, 1913—Amended October 20th, 1921; August 6th, 1931; October 3rd, 1946

This Charter Party, made and concluded in New York 12th day of June 1974

Between THE SANKO STEAMSHIP CO., LTD., as Timecharterers

Owners of the good Greek Steamship/Motorship "AGIA ERINI II" abuilt 1970

of 18,629 tons gross register, and 12,[illegible] tons net register, having engines of [illegible] indicated horse power

and with hull, machinery and equipment in a thoroughly efficient state, and classed AB

of about 1,301,[illegible] tons deadweight capacity (cargo and bunkers including fresh water and boiler feed water not exceeding [illegible] tons) on a draft of 35 feet 1-1/4 inches on [illegible] Summer freeboard, inclusive of permanent bunkers, which are of the capacity of about [illegible] tons of fuel, and capable of steaming, fully laden, under good weather conditions about 15 knots on a consumption of about 40 tons of [illegible] now [illegible]

and PARABOLA SHIPPING U.K. LTD. Charterers of the City of [illegible]

Witnesseth, That the said Owners agree to let, and the said Charterers agree to hire the said vessel, from the time of delivery, for about a period Timecharter upto MARCH 1, 1975/APRIL 30, 1975

within below mentioned trading limits, Charterers to have liberty to sublet the vessel for all or any part of the time covered by the Charter, but Charterers remaining responsible for the fulfillment of this Charter Party.

Vessel to be placed at the disposal of the Charterers, at retroactive to 12 Noon JUNE 11, 1974 on passing SALBOA Panama Canal (use this transit Owners' account)

[illegible] vessel for delivery to Charterers at [illegible] or so near thereto as she can safely get always afloat, any time day or night, Sundays and holidays included, in such berth as Charterers may direct, where vessel can lie

and discharge

$2.00

1950

See line 51

Clauses 29 through 37, as attached, to be considered as fully incorporated herein.

BROKERS.

Klaus H.H. Beckmann

Executive Vice President
Himoff Maritime Enterprises, Ltd.

For and on behalf of Owners
As per Telex Authority dated June 14, 1974
PERACO CHARTERING CORPORATION
(As Brokers only)

Alan M. Unold, Director

39a

RIDER TO M.V "AGIA ERINI II" CHARTER PARTY DATED JUNE 12, 1974

29. Owners warrant that this vessel has not called Cuba or North Vietnam after January 1, 1962, nor will enter any such port or place prior to delivery under this Charter Party.

30. It is understood vessel is approved for grain without fittings and can carry ore in alternate holds.

31. An on-hire survey is to be held at the delivery port by an impartial surveyor who will submit a survey report to both parties. At the redelivery port, a survey is to be held also in the aforementioned manner. Time and expenses for the survey to be borne equally.

32. Charterers are not to be responsible for stevedore or other damage to the vessel unless notified in writing by the Master at time of occurrence of damage part of this Charter Party and are to be included in giving prompt notice of claim in writing to party causing damage.

33. New Jason Clause, New Both-to-Blame Collision Clause, Chamber of Shipping War Risk Clauses Nos. 1 and 2, and Canadian Clause Paramount, are to be considered part of this Charter Party and are to be included in Bills of Lading issued hereunder.

34. Charterers have the privilege of flying their house flag and painting their markings on vessel's funnel and are to restore marking before redelivery at Charterers' time and expense.

35. Cost of radiograms sent by vessel on Timecharterers' behalf to be for Charterers' account.

36. On delivery Charterers to pay to Owners U.S. Dollars 50,000 lumpsum as ballast bonus.

37. AGIA ERINI II - Greek Flag - Built 1970
All particulars about:
31904 TDW on 35'1-1/8"
1,361,054 cbft grain plus 147,928 in bleeding wingtanks
15 knots on 40 tons IFO (1200 secs.) plus 2 D.O.
6 Holds/6 Hatches
12 Derricks at 5 tons each
LOA - 599'1"
Beam - 84'
TPI - 100

NEW JASON CLAUSE:

In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the Carrier is not responsible by statute, contract or otherwise, the goods, shippers, consignees, or owners of the goods shall contribute with the Carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully as if such salving ship or ships belonged to strangers. Such deposit as the Carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the Carrier before delivery.

NEW BOTH TO BLAME COLLISION CLAUSE:

If the liability for any collision in which the vessel is involved while performing this Bill of Lading fails to be determined in accordance with the laws of the United States of America, the following clause shall apply:

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier."

The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

WAR RISK CLAUSES:

1. No Bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaded after Bills of Lading have been signed, or if the port to which the ship has been ordered to discharge either on signing Bills of Lading or thereafter be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the owner shall discharge the cargo at any other port covered by this Charterparty as ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered.

2. The ship shall have liberty to comply with any orders or directions as to the departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the vessel sails or any department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person having, under the terms of the War Risks Insurance on the ship, the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done, the same shall not be deemed a deviation, and delivery in accordance with such orders or directions shall be a fulfillment of the contract voyage and the freight shall be payable accordingly.

C.S.U.K., London - 26th September, 1935.

40a

Canadian Clause Paramount

This Bill of Lading, so far as it relates to the carriage of goods be water, shall have effect, subject to the provisions of the Water Carriage of Goods Act, 1936, enacted by the Parliament of the Dominion of Canada, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under the said Act. If any term of this Bill of Lading be repugnent to said Act to anyyextent, such terms shall be void to that extent but no further.

TIME CHARTER DATED SEPTEMBER 13, 1974
BETWEEN DISPONENT OWNER HIMOFF MARITIME
ENTERPRISES LTD. AND MARDORF PEACH & CO. LTD.
CHARTERERS.

REPRODUCED AT P. 25a

42a RIDER TO CHARTER PARTY DATED MONTREAL, SEPTEMBER 13TH, 1974 - M.V. "AGIA ERINI II"

Clause 29: Bunkers on delivery and redelivery as on board, approximately the same quantities both ends. Same prices to apply for delivery and redelivery, i.e. U.S. DOLLARS SEVENTY-FIVE ($75.00) per long ton for I.F.O. and U.S. DOLLARS ONE HUNDRED AND TEN ($110.00) per long ton for diesel. Charterers privilege to bunker vessel at Hamburg for their account while discharging, provided it does not interfere with the discharging. Owners privilege to bunker for their account at the port of redelivery, provided it does not interfere with the discharging.

Clause 30: Charterers are not to be responsible for stevedore or other damage to the vessel unless notified in writing by the Master at time of occurrence of damage. Master is to cooperate with Charterers and Agents in giving prompt notice of claim in writing to party causing damage.

Clause 31: Hire to be remitted to: -

Himoff Maritime Enterprises Limited
Account: 121-101-0742
With the Chase Manhattan Bank,
120 World Trade Centre Concourse,
New York

Attention: Mr. Charles Keeler, Vice President

And to immediately full rate cable advise Beneficiary through Chase Manhattan Bank, 120 World Trade Centre Concourse, New York, with value date same date as remittance.

Clause 32: Vessel's Description: (Particulars all about)

M.V. "AGIA ERINI II"

- Greek Flag
- Built 1970
- 31,904 total deadweight
- 35 feet 1.1/8 inches draft
- 1,361,054 cubic feet grain
- plus 147,924 cubic feet in bleeding wingtanks
- 6 holds/6hatches
- 12 X 5 tons winches/derricks; t.p.i. 100
- 599 feet 1 inch length overall
- 84 feet 00 inches beam

Clause 33: New Jason Clause; New Both-to Blame Collision Clause; Chamber of Shipping War Risks Clauses Nos. 1 and 2, are to be considered part of this Charter Party and are to be included in Bills of Lading issued hereunder.

Clause 34: Charterers to reimburse Owners with an amount upto $27,000.00 towards extra insurance assessed by the Underwriters, for trading Churchill. Owners eventually to support such extra insurance by Underwriters' invoice. Any excess over $27,000.00 is to be absorbed by the Owners.

43a RIDER TO CHARTER PARTY DATED MONTREAL, SEPTEMBER 13TH, 1974 - M.V. "AGIA ERINI II"

Clause 35: Vessel to be left in safe seaworthy trim to Master's satisfaction for shifting between loading ports.

Clause 36: It is understood vessel is approved for grain loading without fittings and carry ore in alternate holds.

Clause 37: An on-hire survey is to be held at Hamburg by impartial surveyor who will submit his survey report to both parties. At the redelivery port, a survey is to be held also in the aforementioned manner. Time and expenses for the survey to be borne equally.

Clause 38: Cost of radiograms sent by vessel for Time Charterers behalf to be for Charterers account.

NEW JASON CLAUSE. In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if such salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery.

BOTH TO BLAME COLLISION CLAUSE. If the liability for any collision in which the vessel is involved while performing this Bill of Lading falls to be determined in accordance with the laws of the United States of America, the following clause shall apply:-

If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owner of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier.

The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

WAR RISKS CLAUSE. "1. No Bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaded after Bills of Lading have been signed, or if the port to which the ship has been ordered to discharge either on signing Bills of Lading or thereafter be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the owner shall discharge the cargo at any other port covered by this Charterparty as ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered."

"2. The ship shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the vessel sails or any department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person having, under the terms of the War Risks Insurance on the ship, the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done, the same shall not be deemed a deviation, and delivery in accordance with such orders or directions shall be a fulfillment of the contract voyage and the freight shall be payable accordingly." (C.S.U.K., London—20th September, 1935)."

U.S. DISTRICT COURT
FILED
MAY 28 1975
S. D. OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

TRAMP SHIPPING CO., INC.,

Plaintiff,

- against -

GOTTAAS-LARSEN A/S, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH LTD.,

Defendants.

75 Civ. 1549 WERKER

ORDER FOR APPOINTMENT OF PERSON TO SERVE PROCESS

- -X

Upon the affirmation of the attorney for the plaintiff for an order appointing HERBERT HOLLIDAY residing at 404-428 Portage Avenue, Winninpeg, Manitoba to serve the summons, complaint and crossclaim herein on defendant, and it appearing that HERBERT HOLLIDAY is a qualified person over 21 years of age, and not a party to or an attorney in this action, and that substantial savings in time will result in such appointment;

IT IS ORDERED that HERBERT HOLLIDAY be and he hereby is appointed to serve the summons and complaint herein.

DATED: NEW YORK, N.Y.
MAY 28, 1975

Raymond F. Burghardt
CLERK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC.,

Plaintiff,

-against-

GOTAAS LARSEN A/S, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD, HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH LTD.,

Defendants.

Index No. 75 Civ. 1549 HFW

NOTICE OF MOTION

PLEASE TAKE NOTICE that on the affidavit of JOHN C. MAMOULAKIS, dated June 20, 1975, and all the pleadings and proceedings heretofore had herein, the undersigned will move

13,362/JCM:md

this court at a motion term to be held at Room 1506, United States Court House, Foley Square, City of New York, on the 10th day of July, 1975, at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel may be heard, for an order pursuant to 9 U.S.C. Sections 4 and 5, directing the defendants to proceed to a consolidated arbitration of all claims arising out of the damages sustained by the M/V AGIA ERINI II at Churchill, Manitoba, Canada, in October, 1974, and to appoint an arbitrator within 10 days of the order; and for a further order appointing an arbitrator for the defendants if defendants cannot agree on an arbitrator within the aforesaid 10-day period.

The undersigned shall further move the court that if the above-described order directing a consolidated arbitration is not granted, then an order be issued directing defendant GOTAAS LARSEN A/S to proceed to appoint its arbitrator within 10 days of the said order, or have the court appoint one instead.

The undersigned shall further move the court for an order pursuant to Title 9 U.S.C. Section 3 staying discovery

and any further litigation in this action pending the arbitration of the disputes between the parties.

Oral argument is requested of the court in this motion during the week of July 14, 1975.

Dated: New York, New York
June 20, 1975

Yours etc.,

POLES, TUBLIN, PATESTIDES & STRATAKIS
Attorneys for Plaintiff
Office and Post Office Address
46 Trinity Place
New York, New York 10006
(212) 943-0110

By: /s/ P V Martin
A Member of the Firm

TO: Haight, Gardner, Poor & Havens
Attorneys for Defendants
GOTAAS LARSEN A/S and EMERALD
SHIPPING CORPORATION
One State Street Plaza
New York, New York 10004

Zock, Petrie, Reid, Curtin & Byrnes
Attorneys for Defendants
THE SANKO STEAMSHIP CO., LTD.
19 Rector Street
New York, New York 10006

Vincent, Berg, Russo, Marcigliano & Zawacki
Attorneys for Defendants
PARABOLA SHIPPING UK LTD. and
HIMOFF MARITIME ENTERPRISES, LTD.
127 John Street
New York, New York 10038

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC.,

Plaintiff,

-against-

GOTAAS LARSEN A/S, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH LTD.,

Defendants.

AFFIDAVIT

JOHN C. MAMOULAKIS, being duly sworn, deposes and says:

He is an associate of the firm of Poles, Tublin, Patestides & Stratakis, attorneys for the plaintiff herein, and he is acquainted with the facts, circumstances and proceedings of this case.

13,362/JCM:md

Plaintiff is the owner of the Greek Flag ocean-going freighter, AGIA ERINI II, which it has chartered to defendant, GOTAAS LARSEN A/S, under a time charter party agreement dated December 18, 1969, as amended. Defendant, EMERALD SHIPPING CORPORATION, subchartered the vessel from GOTAAS LARSEN A/S; defendant, THE SANKO STEAMSHIP CO., LTD., subchartered the vessel from EMERALD; defendant PARABOLA SHIPPING UK LTD. subchartered the vessel from SANKO; defendant HIMOFF MARITIME ENTERPRISES LTD., subchartered the vessel from PARABOLA; and defendant, MARDOFF PEACH & CO., LTD. subchartered the vessel from defendant, HIMOFF. It has been admitted in the answers of the defendants (with the exception of MARDOFF PEACH & CO., LTD., which has not yet appeared and answered) that the subcharter parties were on the identical terms and conditions, except as to hire and payments, as the

original charter between plaintiff and GOTAAS LARSEN A/S, and that all the aforesaid contractual relations were in existence in October, 1974. At that time, the vessel was ordered to the port of Churchill, Manitoba, to load a cargo of grain. While entering that port, during its stay there, and also while exiting the port, the vessel suffered serious damages as a result of two groundings and of icy conditions.

Plaintiff brought the suit, alleging that the port of Churchill was an unsafe port for a vessel of the size and type of the AGIA ERINI II at the time of the vessel's voyage there, and that charterers and subcharterers breached the warranties in their respective charter parties by ordering the vessel to Port Churchill. Plaintiff in its complaint claimed damages amounting to $2,700,000.00 from the defendants jointly and severally, and demanded a consolidated arbitration of its claims.

On the basis of the contractual relations described above, each of the defendants have asserted in their pleadings cross-claims for indemnity against their respective charterers.

The original charter party provided as to arbitration as follows:

> "17. That should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by two so chosen; their decision or that of any two of them, shall be final, and for purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men."

The same clause appears in all the subsecuent sub-charter parties enumerated above.

By letter to GOTAAS LARSEN A/S, dated the 25th day of March , 1975, the plaintiff appointed Captain George Stam as its arbitrator. Although two and one-half months have passed since that time, the defendants have failed to appoint an arbitrator.

For reasons set forth in the memorandum of law in support of plaintiff's motion for an order directing the defendants to proceed to consolidated arbitration, the plaintiff believes that this court has the power to order such a consolidated arbitration, even though plaintiff has no direct contractual relation with any of the defendants with the exception of GOTAAS LARSEN A/S. Moreover, plaintiff believes that such a consolidated arbitration is the most efficient and expeditious way of settling the plaintiff's claims against the charterers and all the subcharterers and of the charterers' claims against their respective time-chartered owners. Consolidation would avoid the unnecessary delay and expense of six separate trials before different panels, at which the same evidence would be presented. Consolidation would also insure consistent results.

Plaintiff and its attorneys believe that consolidation of these arbitrations is primarily in the interest of the defendants who have claims for indemnity against their respective charterers. Plaintiff has a right to look to its charterer, GOTAAS LARSEN A/S for full recovery for its damages, and does not therefore, have any particular interest in the consolidation of the arbitrations and claims herein other than to expedite the proceedings and to bring to pass as quickly as possible a consolidation which appears to be desired by all parties. To expedite the proceedings was one of plaintiff's primary reasons for bringing this suit and is the reason for bringing this motion. From conversations with defendants' counsel, your deponent believes that the defendants, which have appeared to date, will not oppose such consolidation.

Although plaintiff has sought this consolidation of all claims and arbitrations, arising out of the aforesaid casualties, it does not wish to be put at a disadvantage thereby. For that reason, plaintiff also proposes that the order directing

the defendants to proceed to consolidated arbitration should also direct them to appoint one arbitrator to the panel. All defendants have a common interest in seeing that the plaintiff's contention and claim fail since this would exonerate them all from any liability. Defendants constitute, therefore, a single side in this dispute. If they were permitted to each appoint an arbitrator in the panel, the panel would become hopelessly weighted against the plaintiff. For that reason, plaintiff believes that should the court order a consolidated arbitration, it should also direct charterers to appoint a single arbitrator who would in the usual manner, together with plaintiff's arbitrator, choose a third arbitrator to constitute a panel of three members, such as that prescribed by the above-quoted arbitration clause appearing in all the relevant charter parties.

Plaintiff also proposes in its motion that if defendants have failed to appoint a joint arbitrator within a reasonable time (10 days) the court should appoint one for them. Such a provision would also provide for a solution to a problem which might otherwise become a serious obstacle to proceeding with the arbitration.

At the very least, the plaintiff is entitled to proceed to arbitration with GOTAAS LARSEN A/S under the provisions of the Charter Party of December 16, 1969, as amended. For that reason, plaintiff's motion proposes an alternative order, in the event that consolidated arbitration is not granted; to wit, an order directing that GOTAAS LARSEN A/S appoint its arbitrator and proceed immediately to arbitrate the plaintiff's claim against it, under the terms of the arbitration clause contained in the Charter between the owner and GOTAAS LARSEN A/S.

Plaintiff has also moved for an order to stay discovery and further litigation in this action. This is in accordance with Title 9, U.S.C. §3, which provides for a stay of litigation

in cases where the issue involved is referrable to arbitration until such arbitration has been had. This part of plaintiff's motion is occasioned by the motion of defendants PARABOLA and HIMOFF, noticed for the 23rd day of June, 1975, for an order directing the plaintiff to produce one of its officers and three of the officers of the AGIA ERINI II. Plaintiff submits that in view of the agreements to arbitrate, discovery proceedings in this case would be utterly inappropriate, and that an order staying them should be issued in accordance with the above-mentioned statute.

Because of the numerous parties, claims and cross-claims in this action, plaintiff's attorneys believe that the issues would best be illuminated on oral argument and accordingly oral argument has been requested of the court. The parties will then be able to clarify their positions as to issues that may have been left out of their papers.

John C. Mamoulakis

JOHN C. MAMOULAKIS

Sworn to before me
this 20th day of June, 1975.

Notary Public

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - x

TRAMP SHIPPING CO., INC.,

Plaintiff,

- against -

GOTAAS LARSEN A/S, EMERALD SHIPPING CORPORATION, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH LTD.,

Defendants.

- - - - - - - - - - - - - - - - - - x

75 Civ. 1549 HFW

AFFIDAVIT IN RESPONSE TO PLAINTIFF'S MOTION FOR CONSOLIDATED ARBITRATION.

BEST COPY AVAILABLE

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

CHARLES S. HAIGHT, JR., being duly sworn, deposes and says:

1. I am a member of the Firm of Haight, Gardner, Poor & Havens, attorneys for defendants Gotaas-Larsen, A/S (hereinafter "Gotaas") and Emerald Shipping Corporation (hereinafter "Emerald"). I make this affidavit in response to the motion of plaintiff Tramp Shipping Co., Inc. ("Tramp") for an order pursuant to the Federal Arbitration Act, 9 U.S.C. Sections 4 and 5, directing a consolidated arbitration of the claims, counter-claims and cross-claims which form the subject matter of these proceedings.

2. The captions of Tramp's motion papers incorrectly omit the name of Emerald as a defendant. Emerald's motion to intervene as a defendant was granted by this Court's order dated June 19, 1975 and filed on June 20.

3. Gotaas and Emerald take the following position in response to Tramp's motion for a consolidated arbitration:

(a) This Court unquestionably has the discretion to order a consolidated arbitration; and to specify the

number and method of selection of the arbitrators who will comprise the consolidated panel.

(b) A consolidated arbitration should certainly be ordered in the circumstances of the present case, in order to avoid multiplicity of actions and the risk of inconsistent results.

(c) In view of the diversity of interests in this case, the consolidated arbitration panel should not consist of three arbitrators, as suggested by Tramp. Rather, the panel should consist of five arbitrators, to be appointed in the manner described below.

The applicable legal principles appear in the memorandum of authorities submitted herewith. This affidavit reviews the pertinent facts.

4. The case at bar concerns damage allegedly suffered by Tramp's vessel AGIA ERINI II when she loaded a cargo of grain at the port of Churchill, Manitoba, Canada in October of 1974. The vessel was to carry the cargo to a Northern European port. As frequently occurs in the maritime industries, a number of parties are related by contract to the voyage. Those contractual relations arise out of a series of time charterparties of the AGIA ERINI II: the time charterparty of a vessel being the maritime law's equivalent of the lease of a house. And just as there are sub-leases of realty, there are sub-charters of vessels. Specifically, in the case at bar, Tramp had time chartered the vessel to Gotaas; Gotaas had sub-chartered her to Emerald; Emerald had sub-chartered her to Sanko Steamship Company ("Sanko"); Sanko sub-chartered to Parabola Shipping U.K. Ltd. ("Parabola"); Parabola sub-chartered to Himoff Maritime Enterprises Ltd. ("Himoff"); and Himoff sub-chartered to Mardoff Peach, Ltd. ("Mardoff").

5. At the time of the voyage alleged in the complaint, all these charters and sub-charters of the AGIA ERINI II were in effect. It is important to remember, however, that Mardoff, and Mardoff alone, the last sub-charterer in the chain, designated Churchill, Manitoba as the loading port and berth. That is because, under a time charter, the charterer directs the vessel's employment; and where, as here, a chain of sub-time charters is involved, those directions are given by the last sub-charterer in the chain. Neither Tramp, as owner of the vessel, nor Gotaas, Emerald, Sanko, Parabola or Himoff as "time-chartered owners" or "disponent owners" (in the maritime parlance) selected Churchill as the vessel's loading port. Mardoff did that. The sailing orders sent back up the chain of charters, ultimately reaching the vessel's master, followed automatically.

6. As alleged in the pleadings, the charterparties are on the same form, and their material provisions are identical. Each charterparty provides in Clause 6 as follows:

> "That the cargoes be laden and/or discharged in any dock or at any wharf or place that Charterers or their Agents, may direct, provided the vessel can safely lie always afloat at any time of tide . . ."

Clause 25 of each charterparty provides:

> "25. The vessel shall not be required to enter any ice-bound port, or any port where lights or lightships have been or are about to be withdrawn by reason of ice, or where there is risk that in the ordinary course of things the vessel will not be able on account of ice to safely enter the port or to get out after having completed loading or discharging."

And Clause 17 of each charterparty provides:

> "That should any dispute arise between Owners and Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men."

7. There are three main issues, involving all the parties: (1) liability; (2) indemnity; and (3) damages.

As to liability, Tramp contends that Clause 6 of the charterparties, quoted above, constitutes a warranty that the ports and berths to which charterers direct the vessel shall be safe for her; and that Churchill was an unsafe port. Tramp asserts claims for breach of warranty against all the defendant charterers in the chain (see complaint at para. 9). The defendant charterers will undoubtedly contend that the damages to the vessel resulted from ice; that the master and/or Tramp had full knowledge of the ice conditions before the vessel attempted to enter the port; and that under pertinent law Tramp has no enforceable claim for damages, the vessel having proceeded in the face of such knowledge. Alternatively, defendants will undoubtedly contend that the knowledge available to the master with respect to conditions at the port and berth reduce Tramp's right to damages.

As to indemnity, the issue lies between the defendant charterers. Assuing arguendo that there is any liability to Tramp, on the basis of breach of charterparty warranties of safety, then each sub-charterer gave the same warranties to the party directly above it in the chain. Those charterers who are "in the middle" (namely, Gotaas, Emerald, Sanko, Parabola, and Himoff) will undoubtedly argue that Mardoff, as the last charterer in line who actually directed the vessel to Churchill, should bear ultimate liability, and should indemnify the other charterers in respect of any liability, loss or expense which may arise out of the alleged casualty.

As to damages, all defendant charterers have an interest in contesting the amount of Tramp's provable damages, again assuming arguendo that there is any liability

to Tramp.

8. It follows from the above that all parties to the litigation are directly involved in the voyage of the AGIA ERINI II which forms the subject matter of the action; and that all pertinent questions of law and fact as between the parties are the same. In these circumstances, this Court should direct a consolidated arbitration, which will involve and be binding upon all the parties. (See the authorities collected under Point I in the memorandum of law accompanying this affidavit).

9. However, it would be an abuse of discretion to direct that all parties resolve their disputes before a panel consisting of only three arbitrators, as Tramp suggests. Tramp's contention assumes that all the defendant charterers have common interests and positions, so that they may be fairly represented as a group by a single arbitrator. As pointed out above, the defendant charterers have as an issue amongst themselves questions of indemnity and ultimate liability for any damages to which Tramp may be entitled. The ultimate potential indemnitor is Mardoff, the last charterer in the chain, which directed the vessel to the loading port. We certainly do not urge that each defendant should appoint its own arbitrator; but no single arbitrator can, in fairness, be appointed to represent the partially diverse interests of all the defendant charterers. We submit that, in the best exercise of the Court's discretion, a five-member arbitration panel should be directed. Tramp would appoint one arbitrator; the group of charterers in the middle (Gotaas, Emerald, Sanko, Parabola, and Himoff) would together appoint one arbitrator; Mardoff would appoint an arbitrator; and the three arbitrators so chosen would select two additional arbitrators. This has been the practice of the Courts in cases which involve two principal

groups of actors, and a third interest which stands in the position of potential indemnitor or guarantor. (See authorities collected under Point II of the accompanying memorandum).

10. Although Mardoff has not appeared in this action, the agreement to arbitrate disputes with Himoff in New York constitutes a consent to the jurisdiction of this Court. Under the authorities, this Court's order may be implemented, in respect of Mardoff, if Himoff forwards a copy of the order to Mardoff by registered mail, return receipt requested (see Point III of accompanying memorandum).

11. For the possible assistance of the Court, a proposed order is attached to this affidavit and marked "Exhibit A".

WHEREFORE, your deponent respectfully prays that the motion of plaintiff Tramp Shipping Co., Inc. for a consolidated arbitration be granted; subject, however, to the provision that the consolidated arbitration panel consist of five members, to be appointed in the manner described in this affidavit.

Sworn to before me
this 7th day of July, 1975

Notary Public

MARGARET E. DILLEMUTH
Notary Public, State of New York
No. 41-0959500
Qualified in Queens County
Cert. filed with New York Co. Clerk
Term Expires March 30, 1977

TO: POLES, TUBLIN, PATESTIDES & STRATAKIS
46 Trinity Place
New York, NY 10006

ZOCK, PETRIE, REID, CURTIN & BYRNES
19 Rector Street
New York, NY 10006

VINCENT, BERG, RUSSO, MARCIGLIANO & ZAWACKI
127 John Street
New York, NY 10038

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - x

TRAMP SHIPPING CO., INC.,

Plaintiff,

- against -

GOTAAS LARSEN A/S, EMERALD SHIPPING CORPORATION, SANKO STEAMSHIP CO. LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH LTD.,

Defendants.

- - - - - - - - - - - - - - - - - - x

75 Civ. 1549 HFW

ORDER

Plaintiff Tramp Shipping Co., Inc. having moved this Court for an order directing a consolidated arbitration proceeding between plaintiff and the six above-captioned defendants; and the Court being fully advised in the premises; it is now

ORDERED that all claims, counter-claims and cross-claims between the parties to this litigation arising out of the voyage of the M/V AGIA ERINI II forming the subject matter of this action shall be referred to a consolidated arbitration before a panel of five arbitrators; and it is further

ORDERED that one arbitrator shall be designated by plaintiff Tramp Shipping Co., Inc.; one arbitrator shall be designated by a group of five defendants consisting of Gotaas-Larsen A/S, Emerald Shipping Corporation, Sanko Steamship Co., Ltd., Parabola Shipping UK Ltd., and Himoff Maritime Enterprises Ltd.; one arbitrator shall be designated by defendant Mardoff Peach, Ltd.; and the three arbitrators thus selected shall appoint two additional arbitrators of their own choosing; and it is further

ORDERED that the first three arbitrators, to be

designated not later than 30 days from the date of this Order, with counsel for the parties and this Court to be notified of the designations as they occur; and it is further

ORDERED that the two arbitrators to be selected by the three arbitrators thus designated shall be selected within twenty days of the designation of the first three arbitrators; and it is further

ORDERED that failing timely designation or selection of any of the five arbitrators as provided in this Order, any party may on five days' notice move this Court for a further order appointing such arbitrator; and it is further

ORDERED that defendant Himoff Maritime Enterprises, Ltd. shall forthwith send to defendant Mardoff Peach, Ltd., by registered mail return receipt requested, a copy of this Order and copies of all motion papers submitted by the other parties in connection with the motion pursuant to which this Order was issued; and it is further

ORDERED that unless defendant Mardoff Peach Ltd. makes application to this Court within two weeks of receipt of the documents referred to in the preceding paragraph of this Order, it shall be fully bound by all provisions of this Order.

U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC., Plaintiff, -against- GOTAAS LARSEN A/S, EMERALD SHIPPING CORPORATION, SANKO STEAMSHIP CO., LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH LTD., Defendants.	:	75 CIV 1549 HFW AFFIDAVIT ON BEHALF OF THE SANKO STEAMSHIP CO. LTD. ON RESPONSE TO PLAINTIFF'S MOTION FOR CONSOLIDATED ARBITRATION

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

PHILIP J. CURTIN, being duly sworn deposes and says:

1. I am a member of the firm of ZOCK, PETRIE, REID & CURTIN, attorneys for defendant, THE SANKO STEAMSHIP CO. LTD., ("Sanko"), and I am familiar with the prior proceedings in this action. I make this affidavit in reply to the motion of plaintiff, TRAMP SHIPPING CO. INC. ("Tramp") which seeks an order pursuant to the Federal Arbitration Act, Title 9 U.S.C. §§4 and 5, directing a consolidated arbitration of the disputes among plaintiff and defendants which are the subject of this action and to the response of defendants' GOTAAS LARSEN A/S ("Gotaas") and EMERALD SHIPPING CORP. ("Emerald").

2. Sanko's position as Tramp's motion and the response of Gotaas and Emerald is as follows:

(a) Sanko agrees that this Court has the power to order a consolidated arbitration among the plaintiff and the

defendants encompassing the issues heretofore raised in these proceedings and any other disputes among the parties which arise out of the several charter parties involved.

(b) Sanko opposes the suggestion of Tramp that a three (3) member panel be constituted and favors a panel of five (5) members to be selected in accordance with the formula proposed by Gotaas and Emerald. However, Sanko does not agree that the Court has the power to order a panel constituted of either three (3) or five (5) members. Sanko contends that each party has a contractual right to appoint an arbitrator in any consolidated proceeding and that the Court may not abrogate those rights, even though in this case it believes a panel so constituted would be unwieldy and would serve no useful purpose.

(c) Sanko, therefore, supports the suggestion of Gotaas and Emerald that a panel of five (5) members be constituted on condition that Gotaas, Emerald, Sanko, Parabola Shipping UK Ltd. ("Parabola") and Himoff Maritime Enterprises Ltd. ("Himoff") can agree on a single arbitrator, or in the absence of such will agree to the appointment of a single arbitrator on their behalf to be chosen by the President of the Society of Maritime Arbitrators.

(d) That if Sanko, Gotaas, Emerald, Parabola and Himoff can agree upon a single arbitrator or a formula for his selection by an independent party neither Tramp nor MARDOFF PEACH

LTD.* ("Mardoff Peach") have any legal grounds to oppose a panel of five (5) members since each will have been accorded the contractual right to appoint an arbitrator.

WHEREFORE, I respectfully pray that

(a) the motion of Tramp for a consolidated arbitration with a panel of three (3) members be denied.

(b) that the Court determine if Gotaas, Emerald, Sanko, Parabola and Himoff can agree on a single arbitrator and if so, direct consolidation with one (1) member to be appointed by Tramp, one (1) member selected by Gotaas, Emerald, Sanko, Parabola and Himoff, jointly or by the President of the Society of Maritime Arbitrators and one (1) by Mardoff Peach and the three (3) so chosen select two (2) further members of the panel.

(c) that in the event that the five (5) member panel cannot be constituted by agreement of Gotaas, Emerald, Sanko, Parabola and Himoff that the Court dismiss the action as against Sanko.

---

* We are advised by counsel for Parabola and Himoff that Mardoff Peach has been served with a third party complaint in this action.

Philip J. Curtin

PHILIP J. CURTIN

Sworn to before me this
9th day of July, 1975.

Josephine F. Kurrett

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

JULIA E. KERR,

being duly sworn deposes and says: That on July 9, 1975, Deponent served the attached Affidavit and Memorandum of Law

Upon: Poles, Tublin, Patestides & Stratakis
46 Trinity Place, New York, N. Y. 10006

Haight, Gardner, Poor & Havens
One State Street Plaza, New York, N. Y.

Vincent, Berg, Russo, Marcigliano & Zawacki
127 John Street, New York, N. Y. 10038

by depositing a true copy thereof securely enclosed in a post-paid wrapper in a Post Office box regularly maintained by the United States Government at No. 19 Rector Street, New York, New York, 10006, directed to said attorney at the last business address within the State designated by said attorney for the purpose upon the preceding papers in this action. Deponent is over the age of eighteen years, and is not a party to this action.

Julia E. Kerr

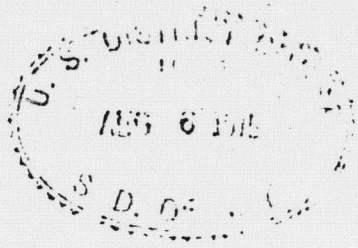
Sworn to before me this 9th day of July, 1975.XXXX.

PHILIP J. CURTIN
Notary Public, State of New York
No. 31-0311400
Qualified in New York County

75-0501

64a

(1 of 7)



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC.,

Plaintiff,

- against -

GOTAAS LARSEN, A.S., SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH, LTD.,

Defendants.

MEMORANDUM DECISION AND ORDER

75 Civ. 1549 (HFW)

#42929

HENRY F. WERKER, D. J.

This action is brought by the owner of the vessel Agia Erini II for damages sustained by her at Churchill, Manitoba, Canada in October 1974.

The defendants are all charterers or sub-charterers of the vessel. All excepting Mardoff Peach, the final sub-charterer, have answered the amended complaint herein and crossclaimed against subsequent sub-charterers. All have denied liability. Mardoff Peach has not filed an answer but has requested additional time to move or answer with respect to the amended complaint.

Parabola Shipping UK Ltd. (Parabola) and Himoff Maritime Enterprises, Ltd. (Himoff) have moved for discovery.

Plaintiff has moved for a consolidated arbitration pursuant to Rule 42(a) and Rule 81(a)(3), Fed, R. Civ. P. and is opposed to discovery because it would delay arbitra-

and because no special circumstances exist.

All parties, even those who have not as yet made a demand or had a demand made upon them, concede that the court, in its discretion, may consolidate the arbitration proceedings. In a case such as this, where all the charter parties contain identical terms and conditions except as to payment of hire, consolidation for hearing of the legal issues arising thereunder by a single panel of arbitrators would clearly spare both the court and the parties substantial cost and delay. The plaintiff would like the arbitration proceeding to be heard by three arbitrators:one to be selected by the plaintiff, and one by defendants; these two would in turn choose a third. The defendants who have appeared and answered favor a panel of five arbitrators: one chosen by plaintiff, one by defendants other than Mardoff and one by Mardoff; the three thus appointed would then choose two more. Plaintiff objects.

There is no dispute that the charter party between plaintiff and Gottaas Larsen A/S and all subsequent charter parties between the defendants subletting the vessel contain the following provision for arbitration:

> "17. That should any disputes arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men."

Memorandum, Decision and Order

With respect to the request for a stay of arbitration pending discovery, the motion is denied. However, I see no reason why discovery during arbitration may not be directed by the arbitrators, if in their discretion they find that it is necessary, and not merely for the convenience of the parties. Katz v. Burkin, 3 A.D.2d 238, 160 N.Y.S.2d 159, (1st Dept. 1957); Penn Tanker Co. v. C.H.Z. Rolimpex, 199 F. Supp. 716 (S.D.N.Y. 1961). Thus the decision on whether discovery would further or delay arbitration will be left in the hands of those who will try the case.

The amended complaint in this action sounds in both negligence and contract with reference to the common convenant of safe port and safe berth. That issue, as well as the issue of damages, is common as between all defendants and the plaintiff. While defendants have argued that a separable issue exists between them with respect to indemnity, it is not beyond the realm of possibility that plaintiff have an interest in their ability to pay if and when liability is found to exist. The parties hereto having agreed to arbitrate by their charters and sub-charters are therefore hereby directed to participate in a consolidated arbitration proceeding of all issues in the case. I am not convinced that consolidation is premature and therefore hereby direct that those defendants who have not invoked the arbitration clause do so forthwith. Himoff is directed to perfect jurisdiction over Mardoff.

Because of the possibility of arbitral partiality

and the refusal of courts to look behind arbitration awards the court has decided in its discretion that this case be tried by a panel of five arbitrators, despite the fact that the parties originally agreed to arbitrate their disputes before a panel of three. See Hidrocarburos Y Derivado, C.A. v. Nereus Shipping, etc., 75 Civ. 463, S.D.N.Y. Memorandum and Order, March 21, 1975. One arbitrator is to be selected by plaintiff, one arbitrator is to be selected by the charterers other than Mardoff and one is to be selected by Mardoff; the remaining two are to be selected by lot from a list of no more than six submitted by the three arbitrators thus chosen (two each). In the event that there is a refusal to serve by any one selected by lot, the arbitrator who submitted that name shall have an opportunity to submit another in its place. The arbitration panel so constituted shall be appointed by the parties no later than sixty days from the filing of this decision.

This action is stayed pending arbitration. Submit order accordingly.

SO ORDERED.

Dated: New York, New York
August 4, 1975

U. S. D. J.

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK 68a

TRIAD SHIPPING CO., INC.,

Plaintiff,

-against-

GOTAAS LARSEN A/S, EMERALD SHIPPING CORPORATION, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDORF PEACH LTD.,

Defendants.

NOTICE OF MOTION

75 Civ. 1540 MEW

S I R S :

PLEASE TAKE NOTICE that upon the cross-complaint herein, and on the annexed affidavits of Mr. Donald George Wilkins, sworn to July 25, 1975, Mr. Alan Algate, sworn to July 23, 1975 and Lawrence G. Cohen, sworn to July 29, 1975, and on all pleadings and proceedings heretofore had herein, the undersigned will move this Court at Room 2904 United States Court House, Foley Square, Borough of Manhattan, City of New York, State of New York, on the 8th day of August, 1975 at 2:15 p.m., or as soon thereafter as counsel can be heard, for an order pursuant to Rule 12(b) (2,4&5) of the Federal Rules of Civil Procedure dismissing the cross-claim against defendant, Mardorf Peach & Co., Ltd., on the grounds (1) that this Court lacks jurisdiction over the person of said defendant, and (2) that no process has been issued or served on Mardorf Peach & Co., Ltd. and for an order pursuant to Rule 12(b)(5) vacating the purported service of the amended answer and cross-claim of Himoff Maritime Enterprises Ltd. and Parabola Shipping UK Ltd. on said defendant on the grounds (1) that no process was served on defendant, Mardorf Peach & Co., Ltd., service of the cross-claim, unaccompanied by process, was of no legal effect and, in

any case, (2) that the purported service of said answer and cross-claim was not made on defendant, or on any agent or other person authorized to accept service of process for or on behalf of said defendant, and for an order directing that costs and reasonable attorneys' fees be assessed against cross-claimants, Himoff Maritime Enterprises and Parabola Shipping Uk Ltd. and for such other further relief as to this Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE that any opposing affidavits and answering memoranda are to be served not later than August 5, 1975 pursuant to Rule 9(c)(2) of the General Rules of this Court as computed in accordance with Rule 6(a) of the Federal Rules of Civil Procedure (or three days earlier if served by mail).

Dated: New York, New York
July 29, 1975.

KIRLIN, CAMPBELL & KEATING
Attorneys for Defendant,
MARFORB PEACH & CO., LTD.

BY Lawrence P. Gabriel

Office & P.O. Address
120 Broadway
New York, New York 10005

TO: VINCENT, BERG, RUSSO, MARCIGLIANO
& ZAWACKI
Attorneys for Defendants &
Cross-Complainants,
HIMOFF MARITIME ENTERPRISES
LTD AND PARABOLA SHIPPING UK LTD.
127 John Street
New York, New York 10038.

HAIGHT, GARDNER, POOR & HAVENS
One State Street Plaza
New York, New York 10004

POLES TUBLIN, PATESTIDES & STRATAKIS
46 Trinity Place
New York, New York 10006

for plaintiff

ZOCK, PETRIE, REID, CURTIN & BYRNES
19 Rector Street
New York, New York 10006

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK 71a

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TRAMP SHIPPING CO., INC.,

Plaintiff,

-against-

GOTAAS LARSEN A/S, EMERALD SHIPPING CORPORATION, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDORF PEACH LTD.

Defendants.

AFFIDAVIT OF LAWRENCE G. COHEN IN SUPPORT OF MOTION

----------X

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

LAWRENCE G. COHEN, being duly sworn, deposes and says:

1. I am an attorney at law associated with the firm of Kirlin, Campbell & Keating, attorneys for the above-mentioned defendant, Mardorf Peach & Co., Ltd. and I am familiar with the proceedings heretofore had herein.

2. This affidavit is submitted in support of the within motion to dismiss the cross-claim on the grounds the court lacks jurisdiction of the person of said defendant, that no process was served, or was insufficient, and the motion to vacate the purported service of the cross-claim on the ground that said service of process was insufficient and unauthorized.

3. As appears from the civil docket of this Court there has been no authorized service of process on defendant. There has merely been an attempted service of a copy of an answer containing an alleged "cross-claim" unaccompanied by any summons

or other form of process, by delivery of the answer in Canada, to Mardorf Peach (Canada) Ltd., a separate entity from defendant, Mardorf Peach & Co., Ltd. and not authorized to accept service of process for Mardorf Peach & Co., Ltd., London.

4. Marforf Peach & Co., Ltd., has not been served with process by plaintiff, Tramp Shipping Co., Inc. or any other party to this litigation, and is not a party to this action. As appears from the affidavit of Mr. Alan Algate, attached hereto as Exhibit A, on receipt of the service of the answer and cross-claim, without a summons, he notified the process server (bailiff) that his company, Mardorf Peach & Co. (Canada) Ltd. was not the same as Mardorf Peach & Co., Ltd., Further, he, Alan Algate, was not on notice of any requirement that Mardorf Peach & Co., Ltd. respond thereto.

5. Attached hereto and made a part hereof as Exhibit B is the affidavit of Mr. Donald George Wilkins sworn to the 25th day of July, 1975, in which are set forth all the facts and circumstances which show that Mardorf Peach & Co., Ltd. is a foreign corporation existing under the laws of Great Britain, which does not do business nor engage in any persistent course of conduct in the State of New York and that the claims asserted in the complaint and cross-claim do not arise out of any business transacted by said defendant in the State of New York.

Affiant is informed that the defendant, Mardorf Peach & Co., Ltd., is not licensed under the laws of State of New York to do business in New York, that it has not done business in New York, and that it has no agent authorized to receive service in New York.

6. As appears from the annexed affidavit of Mr. Donald George Wilkins, the alleged loss which is the subject of plaintiff's complaint and defendant's cross-claim herein arises out of a voyage of the AGIA ERINI II from Churchill, Manitoba, Canada to a port in Europe under a charter party between defendant and cross-claimant, Himoff Maritime Enterprises, Ltd., a Bahamian corporation, dated September 13, 1974, a copy of which is annexed hereto as Exhibit C. Clause 17 of that charter provides for arbitration of all disputes. Cross-claimants have not demanded arbitration with defendant.

WHEREFORE, it is respectfully submitted that based upon the affidavits and exhibits submitted, defendant, Mardorf Peach & Co., Ltd. motion to dismiss the cross-claim and vacate service should be granted in all respects.

Lawrence G. Cohen

LAWRENCE G. COHEN

Sworn to before me this
29th day of July, 1975.

Notary Public.

PETER A. FERRELL III
Notary Public, State of New York
No. 60-6278178 Westchester County
Certificate filed in New York County

Province of Manitoba
To Wit:

In the Matter of

74a

Index No. 75 Civ. 1549
United States District Court
Southern District of New York
Tramp Shipping Co., Inc.,
Plaintiff,

-against-

Gotaas-Larsen A/S, Sanko Steamship Co.,Ltd., Parabola Shipping UK Ltd., Himoff Maratime Enterprises, Ltd. and Mardoff Peach Ltd.,
Defendants

I, Alan Ward Algate

of the City of Winnipeg

in the Province of Manitoba

make oath and say:

1. That, I am Secretary-Treasurer of Mardorf, Peach & Co. (Canada) Ltd., whose head office is in the City of Winnipeg, Manitoba, Canada.

2. That, on May 28, 1975, I was personally served by a bailiff with ANSWER TO AMENDED COMPLAINT AND CROSS CLAIM in the above named law suit.

3. That, the name of the defendant, Mardoff Peach Ltd., is not the name of our Company, Mardorf, Peach & Co. (Canada) Ltd., and that this fact was related to the bailiff. Also, that, to further clarify this issue I informed the plaintiff's Winnipeg Agent of Record, Messrs. Christie, De Graves & Co., by telephone that the service appeared improper and that our Company name was Mardorf, Peach & Co. (Canada) Ltd.

4. That, nowhere on the ANSWER TO AMENDED COMPLAINT AND CROSS CLAIM was there any indication that a reply was necessary. Also, that, I saw no indication of a date certain for a response by defendant, Mardoff Peach Ltd.

SWORN before me at the City of Winnipeg
in the Province of Manitoba,
this 23rd day of July A.D. 19 75

Alan W Algate

A Notary Public
in and for the Province of Manitoba.
My commission is for life.

Exhibit B

75a

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO. INC.

Plaintiff

-against-

75 Civ. 1549

GOTAAS-LARSEN A/S, SANKO STEAMSHIP CO. LTD., PARABOLA SHIPPING U.K. LTD., HIMOFF MARITIME ENTERPRISES LTD., MARDORF PEACH LTD.

Defendents

AFFIDAVIT OF DONALD GEORGE WILKINS

I, DONALD GEORGE WILKINS of 205 Lincoln Avenue, Twickenham, Middlesex, do hereby make oath and say as follows :-

1. I am a Director of Mardorf Peach & Co. Ltd. of 52 Mark Lane, London, EC3R 7PC ("Mardorf Peach, London") and have held this office for the past five years. I had been with Mardorf Peach, London, for two years previous to that. I have been an accountant in commerce for the past 20 years. Of the six Directors at Mardorf Peach, London, I am the Director in charge of all accounting and administrative matters, whereas the other five Directors attend to trading problems.

2. Mardorf Peach & Co. (Canada) Ltd. ("Mardorf Peach, Canada") is a wholly owned subsidiary of Mardorf Peach, London, in common with two other companies in the United Kingdom which are wholly owned subsidiaries. Mardorf Peach, London, is itself a subsidiary, in common with many other companies, of Associated British Foods Limited.



3. Mardorf Peach, Canada, is an entirely separate entity to Mardorf Peach, London. It has entirely separate accounting and there is no exchange of staff between the two companies. The Canadian company buys and exports Canadian grain mostly, but not entirely, to Mardorf Peach, London.

4. Mardorf Peach, London, does not conduct business in the State of New York, either regularly or otherwise. The majority of Mardorf Peach, London's business is the importing of North American grain into the United Kingdom. This is divided approximately 80% from ports in the St. Lawrence and 20% from ports in the Gulf of Mexico. Mardorf Peach, London, never purchase grain for shipment out of any ports of the Eastern Atlantic Seaboard of the United States.

5. The fixture with Himoff Maritime Enterprises which resulted in the trip Charter dated 13th September 1974 at Montreal was made in Antwerp by Inparma Shipping N.V., Brokers acting on our behalf. The performance of the contract had no connection with New York, other than the fact that hire was to be remitted to Himoff's New York Bank. This hire was remitted from our London Office.

6. We had no previous dealings with Messrs. Himoff and it was pure chance that on requiring a vessel for shipment of grain out of Hudsons Bay we happened to come in business contact with Messrs. Himoff as Disponent Owners.



Exhibit B

79a

7. Mardorf Peach, Canada, are not, and never have been, authorised to accept service of process on behalf of Mardorf Peach, London, in United States proceedings or, indeed, proceedings in any other jurisdiction.

SWORN at 41-43 Mincing Lane
in the City of London this
25th day of July 1975
Before me

D.C.W.S.

Notary Public
London, England.
My Commission expires
at death.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO. INC.

Plaintiff

- against -

GOTAAS-LARSEN A/S, SANKO STEAMSHIP CO. LTD., PARABOLA SHIPPING U.K. LTD., HIMOFF MARITIME ENTERPRISES LTD., MARDORF PEACH LTD.

Defendents

75 Civ. 1549

AFFIDAVIT OF DONALD GEORGE WILKINS

HOLMAN FENWICK & WILLAN
SOLICITORS
1 PEPYS STREET
LONDON EC3

PBS
25.7.75
Telephone: 488.2300

TIME CHARTER DATED SEPTEMBER 13, 1974
BETWEEN DISPONENT OWNER HIMOFF MARITIME
ENTERPRISES LTD. AND MARDORF PEACH & CO. LTD.
CHARTERERS.

REPRODUCED AT P. 25a

Exhibit C

RIDER TO CHARTER PARTY DATED MONTREAL, SEPTEMBER 13TH, 1974 - M.V. "AGIA ERINI II"

use 29: Bunkers on delivery and redelivery as on board, approximately the same quantities both ends. Same prices to apply for delivery and redelivery, i.e. U.S. DOLLARS SEVENTY-FIVE ($75.00) per long ton for I.F.O. and U.S. DOLLARS ONE HUNDRED AND TEN ($110.00) per long ton for diesel. Charterers privilege to bunker vessel at Hamburg for their account while discharging, provided it does not interfere with the discharging. Owners privilege to bunker for their account at the port of redelivery, provided it does not interfere with the discharging.

se 30: Charterers are not to be responsible for stevedore or other damage to the vessel unless notified in writing by the Master at time of occurrence of damage. Master is to cooperate with Charterers and Agents in giving prompt notice of claim in writing to party causing damage.

se 31: Hire to be remitted to: -

Himoff Maritime Enterprises Limited

Account: 121-101-0742

With the Chase Manhattan Bank,
120 World Trade Centre Concourse,
New York

Attention: Mr. Charles Keeler, Vice President

And to immediately full rate cable advise Beneficiary through Chase Manhattan Bank, 120 World Trade Centre Concourse, New York, with value date same date as remittance.

se 32: Vessel's Description: (Particulars all about)

M.V. "AGIA ERINI II"

- Greek Flag
- Built 1970
- 31,904 total deadweight
- 35 feet 1.1/8 inches draft
- 1,361,054 cubic feet grain
- plus 147,924 cubic feet in bleeding wingtanks
- 6 holds/6hatches
- 12 X 5 tons winches/derricks; t.p.i. 100
- 599 feet 1 inch length overall
- 84 feet 00 inches beam

e 33: New Jason Clause; New Both-to Blame Collision Clause; Chamber of Shipping War Risks Clauses Nos. 1 and 2, are to be considered part of this Charter Party and are to be included in Bills of Lading issued hereunder.

e 34: Charterers to reimburse Owners with an amount upto $27,000.00 towards extra insurance assessed by the Underwriters, for trading Churchill. Owners eventually to support such extra insurance by Underwriters' invoice. Any excess over $27,000.00 is to be absorbed by the Owners.

RIDER TO CHARTER PARTY DATED MONTREAL, SEPTEMBER 13TH, 1974 - M.V. "AGIA ERINI II"

Clause 35: Vessel to be left in safe seaworthy trim to Master's satisfaction for shifting between loading ports.

Clause 36: It is understood vessel is approved for grain loading without fittings and carry ore in alternate holds.

Clause 37: An on-hire survey is to be held at Hamburg by impartial surveyor who will submit his survey report to both parties. At the redelivery port, a survey is to be held also in the aforementioned manner. Time and expenses for the survey to be borne equally.

Clause 38: Cost of radiograms sent by vessel for Time Charterers behalf to be for Charterers account.

BEST COPY AVAILABLE

NEW JASON CLAUSE. In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the carrier is not responsible, by statute, contract or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if such salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery.

BOTH TO BLAME COLLISION CLAUSE. If the liability for any collision in which the vessel is involved while performing this Bill of Lading falls to be determined in accordance with the laws of the United States of America, the following clause shall apply:—

If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owner of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier.

The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

WAR RISKS CLAUSE. "1. No Bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaded after Bills of Lading have been signed, or if the port to which the ship has been ordered to discharge either on signing Bills of Lading or thereafter be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the owner shall discharge the cargo at any other port covered by this Charterparty as ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered."

"2. The ship shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the vessel sails or any department thereof, or any person acting or purporting to act with the authority of such Government or of any department thereof, or by any committee or person having, under the terms of the War Risks Insurance on the ship, the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anything is done or is not done, the same shall not be deemed a deviation, and delivery in accordance with such orders or directions shall be a fulfillment of the contract voyage and the freight shall be payable accordingly." (C.S.U.K. London—20th September, 1935)."

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United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 75 Civ. 1549 W

WERKER

TRAMP SHIPPING CO., INC.,

Plaintiff

v.

GOTAAS-LARSEN A/S, SANK STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH LTD.,

Defendant s

ADDITIONAL SUMMONS

To the above named Defendants :

You are hereby summoned and required to serve upon VINCENT, BERG, RUSSO, MARCIGLIANO & ZAWACKI,

defendants HIMOFF and PARABOLA
~~plaintiff's~~ attorney s, whose address is 127 John Street, New York, N.Y. 10038,

and cross-claim
an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

RAYMOND F. BURGHARDT,
Clerk of Court

Deputy Clerk

Date: August 4, 1975

[Seal of Court]

NOTE—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - x

TRAMP SHIPPING CO., INC.,

Plaintiff,

- against -

GOTAAS-LARSEN A/S, EMERALD SHIPPING CORPORATION, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDORF PEACH LTD.,

Defendants.

- - - - - - - - - - - - - - - - - - x

75 Civ. 1549 HFW

AFFIDAVIT IN RESPONSE TO DEFENDANT MARDORF PEACH & CO., LTD.'S MOTION

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

RICHARD L. JARASHOW, being duly sworn, deposes and says:

1. I am an attorney associated with the firm Haight, Gardner, Poor & Havens, attorneys for defendants Gotaas-Larsen, A/S (hereinafter "Gotaas") and Emerald Shipping Corporation (hereinafter "Emerald") and I am familiar with the proceedings heretofore had herein. I make this affidavit in response to the motion of defendant Mardorf Peach & Co., Ltd. ("Mardorf") for an order pursuant to Rules 12(b)(2)(4) and (5) of the Federal Rules of Civil Procedure dismissing the claims against Mardorf for lack of in personam jurisdiction and vacating service of process.

2. Gotaas and Emerald take the following position in response to Mardorf's motion:

(a) This Court has in personam jurisdiction over Mardorf because the agreement to arbitrate disputes in New York with the defendant Himoff constitutes a consent to the jurisdiction of this Court.

(b) Mardorf's objections to service of process are now moot since Himoff's counsel has advised that the Clerk of this Court has been requested to make service upon Mardorf by mailing a copy of the summons and complaint, return receipt requested, to its London offices.

The applicable legal principles appear in the memorandum of authorities submitted with this affidavit.

3. Mardorf counsel has annexed to its affidavit a copy of the charterparty between Himoff and Mardorf dated September 13, 1974. Clause 17 of the charterparty reads as follows:

> "That should any dispute arise between Owners and Charterers, the matter in dispute shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men."

Under the principles discussed in the accompanying memorandum of authorities, this constitutes a consent to the in personam jurisdiction of this Court over Mardorf. Mardorf's motion to dismiss for lack of jurisdiction should accordingly be denied.

4. Himoff's counsel has advised that the Clerk of this Court has been requested to serve Mardorf at its London address by registered mail return receipt requested. Under the applicable authorities this constitutes proper service. Mardorf's objections to service of process are now moot and its motion to vacate is without further legal significance.

5. This Honorable Court has reserved decision on plaintiff Tramp Shipping Co., Inc.'s ("Tramp") motion pursuant to Title 9 U.S.C. §§ 4 and 5 directing the parties to proceed to a consolidated arbitration of all claims

arising out of damages allegedly sustained by the M/V AGIA ERINI II at Churchill, Manitoba, Canada in October, 1974.

6. Defendant Mardorf's instant motion is closely related to the motion for consolidation in that Mardorf is the only sub-charterer of the AGIA ERINI II which has neither appeared in this action nor responded to the motion for consolidation. Since Mardorf should be made a party to the consolidated proceedings in order to complete the chain of sub-charterers and since no grounds have been set forth upon which Mardorf should be dismissed from this action it is respectfully submitted that Mardorf be directed to respond to the pending motion for consolidation.

7. Gotaas and Emerald, in their papers submitted in response to Tramp's motion for consolidation, indicated their understanding that Mardorf had not appeared in this action and proposed that the Court order defendant Nimoff to send Mardorf by registered mail, return receipt requested a copy of the Order for consolidation and all other papers submitted in connection with the motion. The proposed Order also contained a direction that unless Mardorf applied for relief within two weeks, it would be fully bound by all provisions of the Order.

8. Under the circumstances, since Mardorf has applied for relief on its own motion, Gotaas and Emerald respectfully submit that if the Court upholds jurisdiction and proper service of process which your deponent submits is appropriate for the reasons herein stated, Mardorf be given the opportunity, within ten days of the date of the Order, to respond to the motion for consolidated arbitration.

WHEREFORE, your deponent respectfully prays that the motion of defendant Mardorf Peach & Co., Ltd. be in all respects denied and that Mardorf be permitted 10 days to

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respond to the motion for consolidated arbitration.

Richard L. Jarashow

Sworn to before me

this 5th day of Auguat, 1975

s/ Lori Marie Lozzi
Notary Public

NOTARIAL SEAL

TO: KIRLIN, CAMPBELL & KEATING
120 Broadway
New York, NY 10005

VINCENT, BERG, RUSSO, MARCIGLIANO & ZAWACKI
127 John Street
New York, NY 10038

POLES, TUBLIN, PATESTIDES & STRATAKIS
46 Trinity Place
New York, NY 10006

ZOCK, PETRIE, REID, CURTIN & BYRNES
19 Rector Street
New York, NY 10006

75-0501
JFC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRANP SHIPPING CO., INC.,	:	75 Civ. 1549 MEW
Plaintiff,	:	AFFIDAVIT IN OPPOSITION TO MOTION OF MARDORF PEACH LTD.
-against-	:	
COTAAC-LARSEN A/S, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES LTD., MARDORF PEACH LTD.,	:	
Defendants.	:	

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

JAMES F. CAMPISE, being duly sworn, deposes and says:

1. I am an attorney at law associated with the firm of VINCENT, HERO, RUSSO, MARCIGLIANO & ZAWACKI, attorneys for defendants PARABOLA SHIPPING UK ("PARABOLA") and HIMOFF MARITIME ENTERPRISES, LTD. ("HIMOFF"), and I am familiar with the proceedings had herein.

2. This Affidavit is submitted in opposition to the motion of defendant, MARDORF PEACH LTD., to dismiss the cross-claims of defendants PARABOLA and HIMOFF for lack of jurisdiction.

3. Upon information and belief, MARDORF PEACH LTD. agreed to charter the M.V. "AGIA ERINI II" from HIMOFF on or about September 13, 1974 (Exhibit "A").

4. That by Clause 17 of the annexed charter agreement, MARDORF PEACH LTD. agreed to arbitrate in New York any disputes arising out of this charter.

5. That by virtue of such agreement to arbitrate in New York, MARDORF PEACH LTD. has consented to and is therefore subject to the in personam jurisdiction of New York courts.

6. Upon information and belief and the annexed affidavit of service (Exhibit "B"), MARDORF PEACH LTD. was served with process of this Court in Winnipeg, Manitoba, Canada, on May 28, 1975.

7. Despite such service which defendants HIMOFF and PARABOLA believe was valid and effective, providing defendant MARDORF PEACH LTD. with notice of the subject action, process of this Court was delivered to the Clerk of this Court on August 4, 1975, for service upon MARDORF PEACH LTD. (London) pursuant to FRCP 4(i) (Exhibit "C").

WHEREFORE, defendants PARABOLA and HIMOFF respectfully request that the motion of MARDORF PEACH LTD. to dismiss the cross-claim and vacate service should be denied in all respects.

JAMES F. CAMPISE

Sworn to before me this
5 day of August, 1975

Notary Public

STEPHEN A. FRANK
Notary Public, State of New York
No. 52-4509406
Qualified in Suffolk County
Commission Expires March 30, 197

TO: Poles, Tublin, Stratakis & Patestides
46 Trinity Place
New York, New York 10006

Kirlin, Campbell & Keating
120 Broadway
New York, New York 10005

Haight, Gardner, Poor & Havens
One State Street Plaza
New York, New York 10005

Zock, Petrie, Reid, Curtin & Byrnes
19 Rector Street
New York, New York 10006

TIME CHARTER DATED SEPTEMBER 13, 1974
BETWEEN DISPONENT OWNER HIMOFF MARITIME
ENTERPRISES LTD. AND MARDORF PEACH & CO. LTD.
CHARTERERS.

REPRODUCED AT P. 25a

RIDER TO CHARTER PARTY DATED MONTREAL, SEPTEMBER 13TH, 1974 - M.V. "AGIA ERINI II"

Clause 29: Bunkers on delivery and redelivery as on board, approximately the same quantities both ends. Same prices to apply for delivery and redelivery, i.e. U.S. DOLLARS SEVENTY-FIVE ($75.00) per long ton for I.F.O. and U.S. DOLLARS ONE HUNDRED AND TEN ($110.00) per long ton for diesel. Charterers privilege to bunker vessel at Hamburg for their account while discharging, provided it does not interfere with the discharging. Owners privilege to bunker for their account at the port of redelivery, provided it does not interfere with the discharging.

Clause 30: Charterers are not to be responsible for stevedore or other damage to the vessel unless notified in writing by the Master at time of occurrence of damage. Master is to cooperate with Charterers and Agents in giving prompt notice of claim in writing to party causing damage.

Clause 31: Hire to be remitted to: -

Himoff Maritime Enterprises Limited

Account: 121-101-0742

With the Chase Manhattan Bank,
120 World Trade Centre Concourse,
New York

Attention: Mr. Charles Keeler, Vice President

And to immediately full rate cable advise Beneficiary through Chase Manhattan Bank, 120 World Trade Centre Concourse, New York, with value date same data as remittance.

Clause 32: Vessel's Description: (Particulars all about)

M.V. "AGIA ERINI II"

- Greek Flag
- Built 1970
- 31,904 total deadweight
- 35 feet 1.1/8 inches draft
- 1,361,054 cubic feet grain
- plus 147,924 cubic feet in bleeding wingtanks
- 6 holds/6hatches
- 12 X 5 tons winches/derricks; t.p.i. 100
- 599 feet 1 inch length overall
- 84 feet 00 inches beam

Clause 33: New Jason Clause; New Both-to Blame Collision Clause; Chamber of Shipping War Risks Clauses Nos. 1 and 2, are to be considered part of this Charter Party and are to be included in Bills of Lading issued hereunder.

Clause 34: Charterers to reimburse Owners with an amount upto $27,000.00 towards extra insurance assessed by the Underwriters, for trading Churchill. Owners eventually to support such extra insurance by Underwriters' invoice. Any excess over $27,000.00 is to be absorbed by the Owners.

RIDER TO CHARTER PARTY DATED MONTREAL, SEPTEMBER 13TH 1974 - M.V. "AGIA ERINI II"

Clause 35: Vessel to be left in safe seaworthy trim to Master's satisfaction for shifting between loading ports.

Clause 36: It is understood vessel is approved for grain loading without fittings and carry ore in alternate holds.

Clause 37: An on-hire survey is to be held at Hamburg by impartial surveyor who will submit his survey report to both parties. At the redelivery port, a survey is to be held also in the aforementioned manner. Time and expenses for the survey to be borne equally.

Clause 38: Cost of radiograms sent by vessel for Time Charterers behalf to be for Charterers account.

NEW JASON CLAUSE. In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the carrier is not responsible, by statute, contract, or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses, or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if such salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery.

BOTH TO BLAME COLLISION CLAUSE. If the liability for any collision in which the vessel is involved while performing this Bill of Lading falls to be determined in accordance with the laws of the United States of America, the following clause shall apply:—

If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the Carrier in the navigation or in the management of the ship, the owner of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said goods, paid or payable by the other or non-carrying ship or her owners to the owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Carrier.

The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

WAR RISKS CLAUSE. "1. No Bills of Lading to be signed for any blockaded port and if the port of discharge be declared blockaded after Bills of Lading have been signed; or if the port to which the ship has been ordered to discharge either on signing Bills of Lading or thereafter be one to which the ship is or shall be prohibited from going by the Government of the Nation under whose flag the ship sails or by any other Government, the owner shall discharge the cargo at any other port covered by this Charterparty as ordered by the Charterers (provided such other port is not a blockaded or prohibited port as above mentioned) and shall be entitled to freight as if the ship had discharged at the port or ports of discharge to which she was originally ordered."

"2. The ship shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports call, stoppages, destination, delivery or otherwise howsoever given by the Government of the Nation under whose flag the ve sails or any department thereof, or any person acting or purporting to act with the authority of such Government or any department thereof, or by any committee or person having, under the terms of the War Risks Insurance on the s the right to give such orders or directions and if by reason of and in compliance with any such orders or directions anyth is done or is not done, the same shall not be deemed a deviation, and delivery in accordance with such orders or directions shall be a fulfillment of the contract voyage and the freight shall be payable accordingly." (C.S.U.A. London—10th September, 1935)."

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

TRAMP SHIPPING CO., INC., : 75 Civ. 1549

Plaintiff, :

- against - : AFFIDAVIT OF SERVICE

GOTAAS-LARSEN A/S, SANK STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH LTD., :

Defendants. :

- -X

I, HERBERT HOLLIDAY being duly sworn state that I am a qualified person over twenty one years of age and not a party to or an attorney in this action and reside at the City of Winnipeg, Manitoba and that on May 28, 1975 at Winnipeg, Manitoba ; served the within summons, complaint and cross claim pursuant to an ORDER FOR APPOINTMENT OF PERSON TO SERVE PROCESS and an APPLICATION IN SUPPORT of said order on MARDOFF PEACH LTD., the defendant herein by personally delivering said summons, complaint and cross claim to Mr. Alan W. Algate, an officer, Secretary Treasurer, at 303 - 167 Lombard Avenue, at the City of Winnipeg, in the Province of Manitoba.

Herbert Holliday
HERBERT HOLLIDAY

Sworn to before me this 28th
day of May, 1975

Exhibit "B"

Exhibit C

95a

LAW OFFICES
VINCENT, BERG, RUSSO, MARCIGLIANO & ZAWACKI
127 JOHN STREET
NEW YORK, NEW YORK 10038

TELEPHONE
212 344-2083

CABLE ADDRESS
VINBERUS

August 4, 1975

United States District Court
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Attention: Clerk of the Court

Re: TRAMP SHIPPING COMPANY
v.
GOTAAS LARSEN A/S, SANKO STEAMSHIP CO. LTD., PARABOLA SHIPPING UK LTD., MARDOFF PEACH LTD.
Index No. 75 Civ 1549 HFW

Gentlemen:

We enclose $10.00 along with summons, complaint, cross claim and applicable exhibits and ask that you kindly serve in accordance with Rule 4i Mardoff Peach & Company Ltd. at 52 Mark Lane, London, EC 3R 7PC, return receipt requested made returnable to the Clerk of the United States District Court Southern District of New York.

Very truly yours,

VINCENT, BERG, RUSSO,
MARCIGLIANO & ZAWACKI

James F. Campise

JFC/cba
Enclosure

Exhibit "C"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC.,	:	75 Civ. 1549 HFW
Plaintiff,	:	AFFIDAVIT IN REPLY TO DEFENDANTS, HIMOFF
-against-	:	MARITIME ENTERPRISES, LTD. AND PARABOLA
GOTAAS LARSEN A/S, EMERALD SHIPPING CORPORATION, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDORF PEACH LTD.,	:	SHIPPING UK LTD. AFFIDAVIT IN OPPOSITION TO MOTION OF MARDORF PEACH & CO., LTD. TO DISMISS THE CROSS-CLAIM
Defendants.	:	

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

LAWRENCE G. COHEN, being duly sworn, deposes and says:

1. I am an attorney at law associated with the firm of Kirlin, Campbell & Keating, attorneys for defendant, Mardorf Peach & Co., Ltd. and I am familiar with the proceedings heretofore had herein. I make this affidavit in reply to the affidavit and memorandum of defendants, Himoff Maritime Enterprises, Ltd. and Parabola Shipping UK Ltd. in opposition to the motion of Mardorf Peach & Co., Ltd. to dismiss the cross-claim against Mardorf Peach & Co., Ltd. for lack of in personam jurisdiction and vacating service of process.

2. Pursuant to a charter party for the charter of the M/V AGIA ERINI II between Mardorf Peach & Co., Ltd. as charterers and Himoff Maritime Enterprises, Ltd. as disponent owners, made on or about September 13, 1974, Mardorf Peach & Co., Ltd. agreed to arbitrate any disputes between itself and Himoff Maritime Enterprises, Ltd. under said charter party, in New York.

3. Himoff Maritime Enterprises, Ltd. has never demanded arbitration with Mardorf Peach & Co., Ltd. of any disputes under the aforementioned charter party.

4. The aforementioned charter party provides for a time chartered trip to a specific port; namely Churchill, Manitoba, Canada. The aforementioned charter party also provides, in an additional typewritten clause, for payment by Mardorf Peach & Co., Ltd. to Himoff Maritime Enterprises, Ltd. a maximum sum of $27,000 to reimburse Himoff Maritime Enterprises, Ltd. for extra insurance for allowing the vessel to call at Churchill.

5. The aforementioned charter party differs from all other charter parties in the instant litigation in its material terms and constitutes a contract solely between Himoff Maritime Enterprises, Ltd. and Mardorf Peach & Co., Ltd.

WHEREFORE, affiant respectfully prays that defendant, Mardorf Peach & Co., Ltd.'s motion to dismiss the cross-claim and vacate service should be granted in all respects.

Lawrence G. Cohen

LAWRENCE G. COHEN

Sworn to before me this

7th day of August, 1975.

PETER M. FERRELL III
Notary Public, State of New York
No. 60-6278178 Westchester County
Certificate filed in New York County
Term Expires March 30, 1976

NOTARY PUBLIC.

TO: HAIGHT, GARDNER, POOR & HAVENS
Attorneys for defendants, Gotaas Larsen
& Emerald Shipping Corporation.
One State Street Plaza
New York, New York 10004

VINCENT, BERG, RUSSO, MARCIGLIANO
& ZAWACKI
Attorneys for cross-claimants
Himoff Maritime Enterprises Ltd. and
Parabola Shipping UK Ltd.
127 John Street
New York, N.Y. 10038.

POLES, TUBLIN, PATESTIDES
& STRATAKIS
Attorneys for plaintiff, Tramp
Shipping Co., Inc.
46 Trinity Place
New York, New York 10006

ZOCK, PETRIE, REID, CURTIN
& BYRNES
Attorneys for defendant,
Sanko Steamship Co., Ltd.
19 Rector Street
New York, New York 10006.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC., Plaintiff, vs. GOTAAS-LARSEN A.M., SANKO SS CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH LTD., and EMERALD SHIPPING CORP., Defendants.	75 Civ. 1549

Before:

HON. HENRY F. WERKER,
District Judge.

New York, August 15, 1975;
11.00 o'clock a.m.
(Room 1105)

APPEARANCES:

HAIGHT, GARDNER, POOR & HAVENS, Esqs.,
Attorneys for defendants Gotass-Larsen and Emerald Shipping;
BY: CHARLES S. HAIGHT, JR., Esq.,
Of Counsel.

VINCENT, BERG, RUSSO, MARCIGLIANO & ZAWACKI, Esqs.,
Attorneys for defendants Parabola Shipping Uk Ltd., and Himoff Maritime Enterprises, Ltd.;
BY: JAMES F. CAPISE, Esq.,
of Counsel.

bms

KIRLIN, CAMPBELL & KEATING, Esqs.,
Attorneys for defendant Mardoff
Peach Ltd.;
BY: LAWRENCE G. COHEN, Esq.,
Of Counsel.

ZOCK, PETRIE, REID, CURTIN & BYRNES, Esqs.,
Attorneys for defendant Sanko SS Co.;
BY: PHILLIP CURTIN, Esq.,
Of Counsel.

THE CLERK: Tramp Shipping Company, Inc., versus Gotaas-Larsen, et al.

THE COURT: Gentlemen.

MR. COHEN: The moving party is Mardoff Peach, your Honor.

MR. HAIGHT: The defendant Gotaas-Larsen and Emerald Shipping wishes to be heard.

THE COURT: I wish that all the parties will restrict themselves in their comments because I have read the papers submitted in this matter.

MR. COHEN: Your Honor, I would assume that the first order of business, inasmuch as Mr. Haight informs me that Gotaas-Larsen and Emerald are asking to be heard, would be our objection to their intervention in this motion to dismiss the cross complaint based on the fact, as I mentioned in my letter to you, we do not believe they have any standing.

There is no contractual privity here between Mardoff Peach or Gotaas-Larsen and Emerald, nor in any way would they be affected if the cross complaint were dismissed against Mardoff Peach because of the fact their contract is with Himoff Maritime Enterprises, Limited.

Therefore, any papers or submission of argument papers by this party would presuppose that any party in the

action would be able to come into any ancillary proceeding.

With five firms involved here the amount of paper work would be tremendous and creating confusion where no confusion would exist because the answers by the ancillary party are quite clear and forward.

THE COURT: Let's go for the big apple now.

Let's go for the main purpose of your motion.

MR. COHEN: The main purpose of the motion to dismiss the cross complaint is the fact, number one, that there is no in personam jurisdiction we contend.

Through our affidavits and through the memorandum we believe that we have shown that Mardoff Peach has never transacted any business within this district. One of the tasks for obtaining jurisdiction. Nor does this claim arise, as we have shown through our motion papers, out of any business done within this district.

The argument, of course, that Mardoff Peach subjects itself to the jurisdiction of this Court by agreeing to arbitrate, making an arbitration clause would be valid but for the fact that all cases making this applicable are cases involving the compelling of arbitration.

We have not been asked to arbitrate by Himoff Maritime Enterprises. There has been no request, no proper demand for arbitration either formally, through the

nomination of an arbitrator, or in compliance with the provisions of the Civil Practice Act of New York State.

Our contract is with Himoff Maritime Enterprises. If we refuse to arbitrate, then this might be a different situation and then the Court would have jurisdiction. We have not refused to arbitrate with Himoff Maritime Enterprises, and not received demand for arbitration. Therefore, we contend that the Insurance Company of North America versus SS Jotina case is the applicable case.

This situation was one where there was no action to compel arbitration.

THE COURT: Aren't we, in fact, playing games here?

MR. COHEN: No, your Honor, we don't believe there is.

THE COURT: If we met Himoff's demand and you agree or disagree, then they are going to come into court here and make a motion to compel which I am going to be bound to grant and so that we are playing games.

MR. COHEN: Let's stop playing games and get down to the essence of the contract.

This contract between Himoff Maritime Enterprises and Mardoff Peach Limited is a unique charter party. It differs from the other charter parties in several very

important aspects.

Number one, this is a charter party for a named port, a time-charter trip, one named port.

The port was Churchill.

We contend that there is no warranty of a safe port involved here on behalf of Mardoff Peach. The contract was such that it was for anamed port and for a despondent owner of Himoff Maritime Enterprises who contracted --

THE COURT: Isn't that better settled with all of the parties involved?

MR. COHEN: No, your Honor, we don't believe that it is.

We believe that there is a situation here where there is no, as your memorandum decision mentions, common issue of warranty of safe port and berth.

There is an issue that is relevant, we believe, to the other charters involved but not to this particular charter.

This voyage was made under the assumption by Mardoff Peach that they contracted to go to this port and the owners allowed them to go to the port of the despondent owners Himoff and, in addition, they had taken a large sum of money as a condition of this in order to insure the

vessel against any extra risk that might occur.

They assume the risk. Their charter party with whoever was the despondent owner above them did differ but vis-a-vis Mardoff Peach, this was a named port.

The issue of safe port and berth does not occur here. It is crucial that we have a separate arbitration because the charter party is completely different.

THE COURT: All right.

MR. CAMPISI: Your Honor, the position of Mardoff Peach is touching on issues of liability at this point.

I do not think it belongs before the Court on the basis of this motion. The issue that I would believe would be before the Court is whether this Court has in personam jurisdiction sufficient to compel Mardoff Peach to arbitrate. We submit that it has.

Prior to your memorandum of decision and in compliance with it, Himoff did formally demand arbitration of Mardoff Peach but even before that we did serve a summons and complaint which did demand arbitration.

We think that those two either jointly or severally are sufficient to satisfy the demand requirements of the arbitration.

Now, as to the issue of jurisdiction, we do

believe that the agreement, and this is what we submit is the only issue before the Court, that clause of the charter party which provides for arbitration and not the warranty of ports or any other money or issues, we don't believe those are before this Court now.

The agreement to arbitrate, we submit, is jurisdiction within the meaning of the NYCPLR, and does provide sufficient basis within the United States Constitution so that it would not be unwarranted or over-reaching by this Court to exert jurisdiction over this defendant which did agree to arbitrate any dispute which arose out of of this charter party within New York.

It is not unfair. It is a sufficient basis which does not offend due process in any way that we can see.

The question was whether the disputes could be resolved and the form for resolving that dipute, we would submit, is this Court. As I said, we had formally demanded arbitration.

THE COURT: When was that done?

MR. CAMPISE: August 7th, your Honor.

THE COURT: Were you aware of that, Mr. Cohen?

MR. COHEN: Your Honor, as long as the letter is out -- and I do not believe your Honor has a copy of

the letter.

I think if you had a copy of it you would see that if there is a demand for arbitration, it is the most unique demand for arbitration I have seen.

If the Court will permit I will read it.

This is not by registered mail in compliance with Civil Practice Act 7503, not with a return receipt requested. It is dated August 7th, 1975.

"Gentlemen, on behalf of our client Himoff Maritime Enterprises, Limited and in accordance with Clause 17 of the subcharter party we hereby demand arbitration of the disputes which are the subject of an action in the United States District Court in the Southern District of New York entitled Tramp Shipping Company, Inc., plaintiff, versus Gotaas-Larsen A.S., Sanko SS Company, Limited, Parabola Shipping UK Limited, Himoff Maritime Enterprises, Limited, Mardoff Peach Limited, and Emerald Shipping Corporation, defendants, 75 Civ. 1549 (HFW).

"Since there is presently pending before the Court in the above stated action a motion by plaintiff for an order of consolidated arbitration of all disputes among defendants and cross motions

in respect thereto and in particular the composition of the panel, our clients will await the outcome of these motions before designating an arbitrator."

If that's the demand for arbitration, that's the first one I have seen where no arbitrator is named and no essence of the dispute is set out.

THE COURT: I think it is sufficient under the circumstances that existed as of August 7th.

MR. COHEN: As of August 7th?

THE COURT: That is the date of the letter, isn't it?

MR. COHEN: Nothing abo ut the essence of the dispute and not even an arbitrator.

Are we obligated to appoint our arbitrator first?

THE COURT: I presume that before an arbitrator is named there is a --

MR. COHEN: Normally a demand by the person moving the arbitration and stating pursuant to the arbitration clause number --

THE COURT: Do you think there is any question in your clients' mind as to what the separate matter of the dispute might be?

MR. COHEN: I would say a general idea of what

the other parties are but within Himoff Maritime and themselves, I think a great deal of confusion within the provisions of the charter party.

THE COURT: All right.

MR. CAMPISE: I believe Mardoff Peach has taken a position of putting form over substance. I think the demand along with the complaint and correspondence and previous dealings does satisfy the requirement of notice.

We did not nominate an arbitrator for the very reason that we stated in the letter, that we were waiting your Honor's decision, and we have discussed possible arbitrators.

We are in agreement, for the most part, as to the nomination of a specific arbitrator. We think that the objection on part of Mardoff Peach is a spurious objection. We do not see that it has any substance to it.

I think, as your Honor is aware, and we also have our service in Canada, and we are assuming that it was valid but if it were invalid, we took the steps of reserving part of it pursuant to Rule 4-R and we served them in Canada and in London by registered mail in conformity with the Court's requirements.

We submit that that is a sufficient demand as

well as a sufficient service of the summons and complaint.

Again we wo uld ask the Court to restrict its decision to whether or not there is in personam jurisdiction. We think that all other issues, in light of your Honor's decision and our actions up until now, render the service arguments moot. We believe they are moot now.

We believe the only issue before this Court is whether there is in personam jurisdiction over Mardoff Peach.

THE COURT: All right.

MR. COHEN: If I may respond shortly here.

You asked me when I started to cut through the playing games, and I attempted to comply with that request.

I would like to ask Mr. Campise one thing.

He refers to "we" and he said, "We agreed to the arbitrator", and who is "we"?

MR. CAMPISE: The other parties who have demanded arbitration of us. All the other defendants.

We have discussed different arbitrators.

MR. COHEN: The other parties, we have four other defendants here, and all of a sudden all of the defendants are very concerned that they all agree on an arbitrator but Mardoff, according to the decision in the request, although I have not seen any papers because we are not subject to the action, agree but Mardoff appoints

bms

its own arbitrator.

Right there there is an indication that there is a different situation. While four defendants may have something in common that they can agree on one arbitrator, Mardoff Peach does not have anything in common. Why doesn't it have anything in common?

Because it has a different charter party. A unique charter party.

THE COURT: All right, we can go on all day.

Mr. Haight.

MR. HAIGHT: Briefly, your Honor, on the question of the standing of the other defendants which you heard in opposition to Mardoff Peach's motion to get out of this case, it seems to me that the same answer is provided by your Honor's order of consolidation which jumping off from the undisputed fact that all parties agreed to arbitrate disputes in New York and recognizing that there were common questions of law and fact presented affecting all parties, decreed a consolidated arbitration which had the effect, so to speak, of putting all the parties in the same boat.

It follows through that, it seems to me, that all parties are entitled to be heard with respect to efforts to avoid responsibility, be those efforts procedural or

substitutive, put forward by any other party.

Therefore, it does not seem to me that we do have a standing to be heard and if that standing exists, I do no more than express surprise at counsel for Mardoff Peach's letter to the Court of August 12th stating that Himoff Maritime Enterprises had never demanded arbitration with Mardoff Peach in view of the fact that the August 7th letter, which I regard quite clearly as a demand for arbitration, had been sent to counsel for Mardoff Peach.

So on this particular aspect of the case, it seems to me that Mardoff Peach properly before the Court, that arbitration has been properly demanded, and there is no reason to exempt Mardoff Peach from the provisions of the Court's consolidation order.

Certainly no such reason arises from any difference that might appear on the paper in the Mardoff Peach-Himoff charter.

Mr. Cohen said it is entirely different but that surprises me a bit too because all different charters include the identical clause, Clause 6, which is the safe berth clause.

It reads that the cargo or cargoes be laden or discharged in any dock or in any wharf or place that charterers or their agents may direct provided the vessel

can safely --

Now, the charterer in that context is Mardoff Peach. And so we have presented in this case the question of whether or not Mardoff Peach is under any liability with respect to the safety of the berth and the approaches to the berth.

To the extent that there are differences in the charter party forms which Mardoff Peach says makes no difference with respect to liability, surely they are substitutive issues with which the arbitrators will have to deal.

MR. COHEN: In response, your Honor, and taking it step by step, Mr. Haight refers to the memorandum decision and order in this matter.

First of all Mardoff Peach is not bound by this order. We contend that Mardoff Peach was never a party. It was not within the jurisdiction of the Court.

THE COURT: I understand that.

MR. COHEN: Therefore, Mr. Haight's comments with all the parties, all the charter parties, I don't think is relevant at this point.

Secondly, we, in our letter of August 12th, stated that Himoff has never demanded arbitration of Mardoff Peach in accordance with the procedures dictated

by Clause 17 of the charter party. We still contend that. Thirdly, Mr. Haight read from the charter party and he said, "Dock, wharf or place".

Assuming for argument purposes the validity of charter's obligation under that, this presupposes going into a port and putting the vessel at a safe dock, wharf place once she is in the port.

Without getting into the merits here, it is arguable that the vessel, once it was in the port, was at a safe dock, wharf or place. We are not here to argue the merits.

We seem to have gotten away from the fact.

THE COURT: That is for the arbitrators.

MR. COHEN: We are moving away and as far as we can see it have confused the whole situation.

This is a simple jurisdictional point here as far as Mardoff Peach is concerned at this stage.

THE COURT: You have said that many times.

MR. COHEN: We will rest with that.

MR. CURTIN: I support the motion, your Honor, that Mr. Haight has expressed and the attorneys for Himoff have expressed.

THE COURT: I have read the papers and I have not heard anything this morning that is new to me excepting

the so-called demand for arbitration. In my opinion that is a sufficient demand for arbitration.

With respect to yo ur motion to vacate the service, that has become moot in my opinion by reason of the service under 4-I. I think, and I take the position that if your client consented to arbitration in New York, this Court has jurisdiction to compel arbitration.

When I am called upon to consolidate, that, in effect, is being called upon to compel arbitration in accordance with a system that is other than which is provided in the charter party so that, in effect, it is a motion to compel arbitration as well as a motion to consolidate.

So that what I am saying is that I consider having the subject matter, I must of necessity have the in personam jurisdiction to compel your client to arbitrate.

Inasmuch as you do not have the opportunity to respond to the motion to consolidate, I am going to direct all parties here to furnish to you copies of their memoranda and their affidavits.

This is to be done within ten days. You are to, within ten days, respond to it at which time I may find necessary to modify my decision; and in which event the order which has been submitted on that decision, will also

be modified.

That is my decision on your motion.

Gentlemen we will be in recess.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC.,

Plaintiff,

-against-

GOTAAS LARSEN A/S EMERALD SHIPPING CORPORATION, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HEMOFF MARITIME ENTERPRISES, LTD., MARDORF PEACH LTD.,

Defendants

MOTION TO DISMISS CROSS-CLAIM WITH SUPPORTING AFFIDAVITS

KIRLIN, CAMPBELL & KEATING
Attorneys for Defendant,
MARDORF PEACH LTD.
ONE TWENTY BROADWAY.
NEW YORK, N. Y. 10005
(212) 732-5520

Motion to dismiss is denied without prejudice to renew should plaintiff fail to amend complaint to set forth a prima facie admiralty claim.

So Ordered
8/15/75

Henry F. Werker
U.S.D.J.

U.S. DISTRICT COURT
FILED
AUG 19 1975
S.D. OF N.Y.

MICROFILM
AUG 19 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC.,

Plaintiff,

-against-

GOTAAS LARSEN A/S, EMERALD SHIPPING CORPORATION, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDORF PEACH LTD.,

Defendants.

NOTICE OF MOTION

75 Civ. 1549 HFW

S I R S :

PLEASE TAKE NOTICE that upon the cross-claim herein and on the annexed affidavits of Mr. Donald George Wilkins, sworn to July 25, 1975, and Lawrence G. Cohen, sworn to August 28, 1975, and on all pleadings and proceedings heretofore had herein, the undersigned will move this Court at Room 1506, United States Courthouse, Foley Square, Borough of Manhattan, City of New York, State ofNew York on the 22nd day of September, 1975 at 10:00 a.m. or as soon thereafter as counsel can be heard for an order pursuant to Rule 12(b) F.R.C.P.

(1) vacating the attempted service of the "additional summons" and "cross-claim" of defendants, Himoff Maritime Enterprises and Parabola Shipping UK Ltd. and

(2) dismissing the "additional summons" and "cross-claim" for lack of jurisdiction over the person of Mardorf Peach & Co., Ltd., (hereinafter "Mardorf"),

and

if the denial by this Court of Mardorf's previous motion to the Court's jurisdiction forecloses the issue of

jurisdiction (even though there was no ruling on the validity of the first attempted service on Mardorf), for an order granting a re-hearing of Mardorf's previous jurisdictional motion pursuant to Rule 9(m) of the General Rules of this Court and Rule 60(b)(1) F.R.C.P.

PLEASE TAKE FURTHER NOTICE that any opposing affidavits and answering memoranda are to be served no later than September 15, 1975 pursuant to the rules concerning motions, of the Honorable Henry F. Werker (or 3 days earlier if served by mail).

Dated: New York, New York
August 28, 1975.

KIRLIN, CAMPBELL & KEATING
Attorneys for Defendant,
MARDORF PEACH & CO., LTD.,
By Lawrence J. Cotter

Office & P.O. Address
120 Broadway
New York, New York 10005
212-732-5520

TO: VINCENT, BERG, RUSSO, MARCIGLIANO & ZAWACKI
Attorneys for Defendants & Cross-Complainants - HIMOFF MARITIME ENTERPRISES LTD. AND PARABOLA SHIPPING UK LTD.,
127 John Street
New York, New York 10038.

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Defendants, GOTAAS LARSEN A/S & EMERALD SHIPPING CORPORATION
One State Street Plaza
New York, New York 10004

POLES, TUBLIN, PATESTIDES & STRATAKIS
Attorneys for Plaintiff, TRAMP SHIPPING CO., INC.,
46 Trinity Place
New York, New York 10006

ZOCK, PETRIE, REID, CURTIN & BYRNES
Attorneys for defendant, SANKO STEAMSHIP CO., LTD.
19 Rector Street
New York, New York 10006.

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5-60
LGC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC.,

Plaintiff,

-against-

GOTAAS LARSEN A/S, EMERALD SHIPPING CORPORATION, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDORF PEACH LTD.,

Defendants.

AFFIDAVIT OF LAWRENCE G. COHEN

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

LAWRENCE G. COHEN, being duly sworn, deposes and says:

1. I am an attorney at law associated with the firm of Kirlin, Campbell & Keating, attorneys for the above-mentioned defendant, Mardorf Peach & Co., Ltd., (hereinafter "Mardorf") and I am familiar with the proceedings heretofore had herein.

2. This affidavit is submitted in support of the within motion (a) to vacate service of the amended answer and cross-claim of defendants, Himoff Maritime Enterprises, Ltd. and Parabola Shipping UK Ltd. on the ground that said service of process pursuant to Rule 4(e) and (i) was insufficient and unauthorized, (b) to dismiss the cross-claim because this court has no jurisdiction over the person of Mardorf, and (c) for re-argument of Mardorf's previous motion to

the court's jurisdiction, if the denial of that motion is considered a bar to again raising the question in the context of the second attempted service on Mardorf.

3. On or about May 28, 1975, defendants, Himoff and Parabola, attempted to serve a cross-claim on Mardorf Peach & Co., Ltd., seeking money damages only, by serving a copy of plaintiff's complaint and a copy of the answer and "cross-claim" of defendants, Himoff and Parabola, , without a summons or other process, on Mardorf Peach & Co., Canada Ltd., a completely separate corporation, not authorized to accept service of process on behalf of Mardorf Peach & Co., Ltd., London, England.

4. On July 30, 1975, Mardorf filed a motion for (1) an order dismissing the "cross-claim" on the grounds that Mardorf was not then a party to this suit against whom a "cross-claim" could be filed and there was no basis on which this Court could exercise jurisdiction over the person of Mardorf and (2) for an order vacating the purported service of the amended answer and cross-claim on the ground that no process was served on Mardorf Peach & Co., Ltd., and that there was no basis on which this Court could exercise jurisdiction over the person of Mardorf.

5. On August 4, 1975, defendants, Himoff and Parabola, attempted to correct the improper first service of the amended answer and cross-claim on Mardorf by requesting the Clerk of the Court to serve Mardorf Peach & Co., Ltd., by mail in London, England pursuant to Rule 4(i) of the Federal Rules of Civil Procedure. (See Exhibit A attached hereto and made part hereof). A certificate of mailing was filed on

August 5, 1975. However, no evidence of receipt of the complaint and summons appears on the docket sheet and this affiant has received no such papers from Mardorf and therefore cannot say whether such documents were, in fact, received by Mardorf.

6. On August 19, 1975, a memo endorsed by the Court on Mardorf's motion papers stated:

> "Motion to dismiss is denied
> Motion to vacate service is moot due
> to service under FRCP 4(i)
> So Ordered
> 8/15/75 Henry F. Werker
> USDJ "

7. Although the Court did not give its reasons for this determination, it is assumed that the denial of Mardorf's motion to dismiss was based on the theory that the challenged service had been "mooted". In any case, the motion before the court on which the aforesaid determination was made did not concern or pass upon the validity or basis for the belated attempted service on Mardorf by mail to London. Instead, the court appears to have assumed, and was entitled to assume, the validity of such belated service at least until its validity was challenged as Mardorf is now doing by this motion. Certainly, there were no facts shown to court at the time of the court's endorsed memo of August 19 to support either jurisdiction over Mardorf or the validity of the belated attempted service by mail to London.

8. Attached hereto and made a part hereof as Exhibit B is the affidavit of Mr. Donald George Wilkins sworn to the 25th day of July, 1975, in which are set forth all the facts and circumstances which show that Mardorf is a foreign corporation existing under the laws of Great Britain

which does not do business or engage in any persistent course of conduct in the State of New York and that the claims asserted in the complaint and cross-claim do not arise out of any business transacted by Mardorf in the State of New York.

9. Affiant is informed that a search of the records of the Department of State of the State of New York revealed that Mardorf Peach & Co., Ltd. is not licensed under the laws of the State of New York to do business in New York, that it has not done business in New York and that it has no agent authorized to receive service in New York.

10. As appears from the pleadings herein and the annexed affidavit of Mr. Donald George Wil[illegible], the claim which is the subject of plaintiff's complaint and the so-called "cross-claim" of the defendants, Himoff and Parabola, arises out of a voyage of the AGIA ERINI II from Churchill, Manitoba, Canada, to a port in Europe under a charter party between Mardorf and cross-claimant, Himoff Maritime Enterprises Ltd., a Bahamian corporation, dated September 13, 1974. The charter party was not negotiated or made in New York.

11. As appears from the plaintiff's complaint and the defendants' cross-claim, this is an action for money damages only. The "cross-claim" does not plead any facts giving rise to any other relief. It alleges merely that

> "If as a result of the matters alleged in the complaint and in this answer HIMOFF MARITIME ENTERPRISES LTD. or PARABOLA SHIPPING UK LTD., is held liable to plaintiff for any or all damages alleged that defendant, MARDOFF (sic) PEACH LTD. is liable to indemnify HIMOFF MARITIME ENTERPRISES LTD. and/or PARABOLA SHIPPING UK LTD. together with attorney's fees."

12. As appears from the annexed affidavit and exhibits submitted Mardorf Peach & Co., Ltd. has neither transacted business with the State of New York or within this District nor has it consented to the jurisdiction of this Court. The foregoing facts were not controverted on Mardorf's earlier motion and, it is submitted that they cannot be controverted now.

13. Cross-claimants, Himoff and Parabola, have not produced any evidence sufficient to sustain personal jurisdiction over Mardorf under New York State law.

WHEREFORE, it is respectfully submitted that based upon the affidavits, exhibits and memorandum of law submitted in support of this motion, Mardorf Peach & Co., Ltd.'s motion to

(1) vacate the attempted service of process pursuant to Rule 4(e) and (i) F.R.C.P.;

(2) dismiss the "additional summons" and "cross-claim" for lack of jurisdiction over the person of Mardorf Peach & Co., Ltd. and

(3) request for an order granting a re-hearing of Mardorf's previous jurisdictional motion pursuant to Rule 9(m) of the General Rules of this Court and Rule 60(b) (1) F.R.C.P. if the denial by this Court of Mardorf's previous motion to the Court's jurisdiction forecloses the issue of jurisdiction (even though there was no ruling on the validity of the first attempted service on Mardorf) should be granted in all respects.

Lawrence G. Cohen
LAWRENCE G. COHEN

Sworn to before me this
day of August, 1975.

John B. Conway
Notary Public

VINCENT, BERG, RUSSO, MARCIGLIANO & ZAWACKI

[illegible] JOHN STREET
NEW YORK, NEW YORK 10038

TELEPHONE
212 344 6903

CABLE ADDRESS
VINDEMUS

125a

August 4, 1975

United States District Court
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

Attention: Clerk of the Court

Re: TRAMP SHIPPING COMPANY
v.
GOTAAS LARSEN A/S, SANKO STEAMSHIP CO. LTD., PARABOLA SHIPPING UK LTD., MARDOFF PEACH LTD.
Index No. 75 Civ 1549 HFW

Gentlemen:

We enclose $10.00 along with summons, complaint, cross claim and applicable exhibits and ask that you kindly serve in accordance with Rule 4i Mardoff Peach & Company Ltd. at 52 Mark Lane, London, EC 3R 7PC, return receipt requested made returnable to the Clerk of the United States District Court Southern District of New York.

Very truly yours,

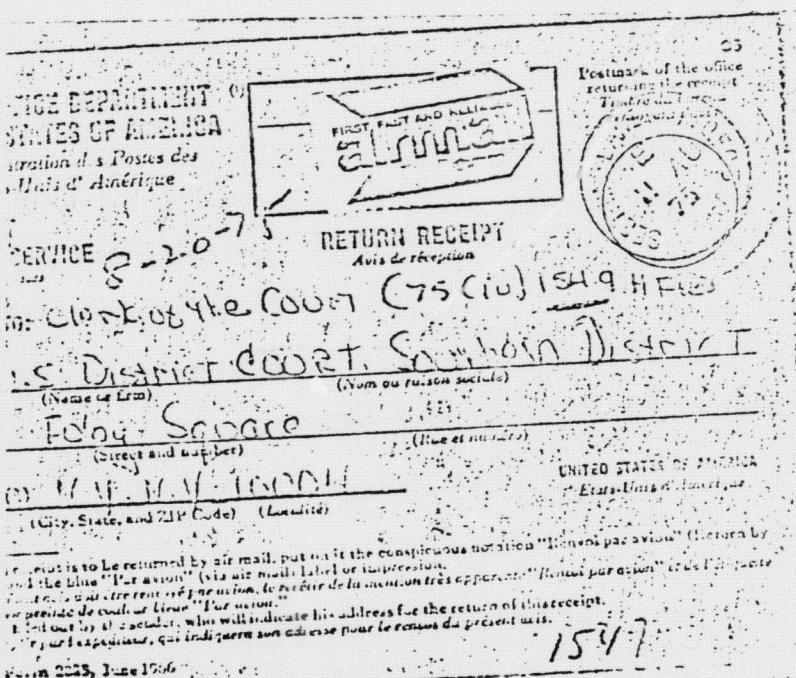
VINCENT, BERG, RUSSO,
MARCIGLIANO & ZAWACKI

James F. Campise

JFC/cba
Enclosure

[illegible] 241897 POSTMARK OF

Exhibit A


RETURN RECEIPT
Avis de réception
Clerk of the Court (75 (10) 1549 H Fed)
U.S. District Court, Southern District
Foley Square
UNITED STATES OF AMERICA
1547

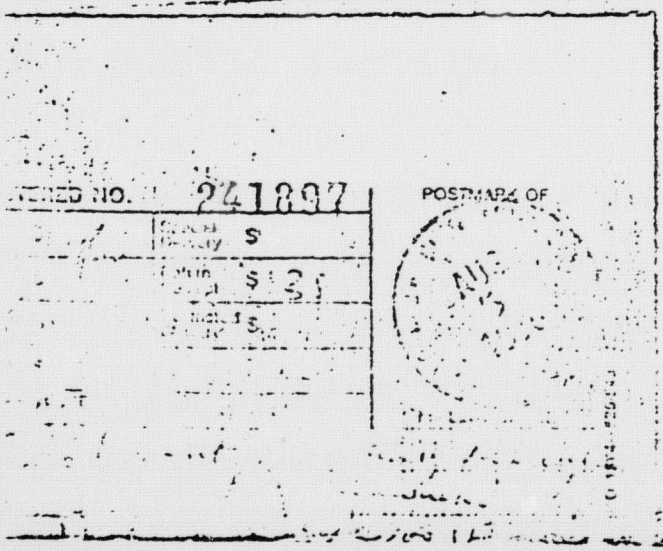

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POSTMARK OF

Exhibit A

TRAMP SHIPPING COMPANY, INC.

Plainitff

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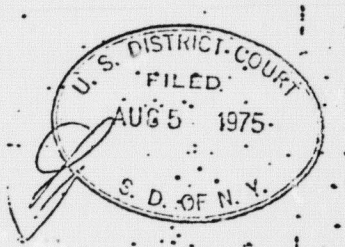
GOTAAS-LARSON A/S, et al

Defendants

75 Civ 1549

WERKER

CERTIFICATE OF MAILIN



I, RAYMOND F. BURGHARDT, CLERK of the United States District Court for the Southern District of New York, do hereby certify that on the 5th day of August 19 75 I served the complaint and summons filed and issued herein on the 4th day of August 1975 by mailing by registered mail, return receipt requested, at the United States Post Office, ~~Church Street~~ Station, New York, N.Y. a copy of each thereof, securely enclosed in a postpaid wrapper, addressed to:

MARDOFF PEACH & CO., LTD.
52 MARK LANE
LONDON EC 3R 7PC

and that annexed to the original hereof is registered mail receipt no. 24[illegible] (Church Street Station) which was issued upon request as aforementioned.

Dated: New York, N.Y.
August 5, 1975

CLERK

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 75 Civ. 1549 W

WERKER

TRAMP SHIPPING C.., INC.,

Plaintiff

v.

GOTAAS-LARSEN A/S, SANK STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH LTD.,

Defendant S

ADDITIONAL SUMMONS

To the above named Defendants :

You are hereby summoned and required to serve upon VINCENT, BERG, RUSSO, MARCIGLIANO & ZAWACKI,

defendants HIMOFF and PARABOLA
~~plaintiff's~~ attorney S, whose address is 127 John Street, New York, N.Y. 10038,

and cross-claim
an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

RAYMOND F. BURGHARDT
Clerk of Court

Deputy Clerk

Date: August 4, 1975

[Seal of Court]

This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

TRAMP SHIPPING CO., INC.,

Plaintiff,

-against-

GOTAAS-LARSEN A/S, EMERAL SHIPPING CORPORATION, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES LTD., MARDORF PEACH LTD.

Defendants.

- X

75 Civ. 1549 HFW

AFFIDAVIT IN OPPOSITION

STATE OF NEW YORK)
ss:
COUNTY OF NEW YORK)

JAMES F. CAMPISE, being duly sworn, deposes and says:

1. I am an attorney associated with the firm VINCENT, BERG, RUSSO, MARCIGLIANO, & ZAWACKI, attorneys for defendants HIMOFF MARITIME ENTERPRISES LTD., and PARABOLA SHIPPING UK LTD., and I am familiar with the proceedings heretofore had herein. I make this affidavit in response to the motion of defendant MARDORF peach & Co., ltd. ("Mardorf").

2. By its memorandum order dated August 4, 1975 this Honorable Court in its discretion found that the captioned action is one to compel arbitration and not for money damages.

3. Defendants PARABOLA and HIMOFF in their cross-claims against MARDORF, provided for such a finding in Paragraph "FOUR" of their demand as follows:

"in the event arbitration is ordered to commence between PARABOLA SHIPPING (UK) LTD., and any other party or HIMOFF MARITIME ENTERPRISES, LTD., and any other party that arbitration also be ordered by the court as between HIMOFF MARITIME ENTERPRISES LTD., and MARDORF PEACH LTD., pursuant to their Charter Party agreement dated September 13, 1974 and attached hereto as Exhibit 'A'."

4. In compliance with the said memorandum order, defendants PARABOLA and HIMOFF on August 7, 1975 demanded arbitration of MARDORF by the attached letter (Exhibit 1) which was mailed to MARDORF and hand delivered to their attorneys.

5. MARDORF'S attorneys are attempting to becloud what is in essence a very simple issue i.e. whether this Court has personal jurisdiction to compel MARDORF to submit to arbitration.

6. This Court on August 19, 1975 properly held that it did have such jurisdiction by virtue of the agreement to arbitrate in New York. The memorandum of law submitted with MARDORF'S renewed motion adds nothing to change such a result.

INSURANCE COMPANY OF NORTH AMERICA v. SS JOTINA, 1974 AMC 1190- so heavily relied upon by MARDORF accepts the very proposition ennunciated by this Court that the New York arbitration clause empowers this Court to compel MARDORF to submit to arbitration.

7. As previously stated, we believe that the substantive issue in this matter is jurisdiction and not service of process. However, in view of the continued efforts of MARDORF to raise issues regarding service of process, we applied for and obtained an ex parte order (Exhibit2) to have MARDORF served personally in London (Exhibit 3).

8. To date the affidavit of service has not yet been returned, however, we anticipate that service will be effected shortly.

WHEREFORE, your deponent respectfully prays that the motion of defendant MARDORF PEACH & CO., LTD., to dismiss and to vacate be in all respects denied and that your Honor find that MARDORF has been provided with adequate notice of the instant action and is therefore a party to this action.

Sworn to before me
this 12th day of September, 1975

JAMES F. CAMPISE

Notary Public

TO: POLES, TUBLIN, PATESTIDES & STRATAKIS
46 Trinity Place
New York, New York 10006

ZOCK, PETRIE, REID, CURTIN & BYRNES
19 Rector Street
New York, New York

HAIGHT, GARDNER, POOR & HAVENS
One State Street Plaza
New York, New York

KIRLIN, CAMPBELL & KEATING
120 Broadway
New York, New York

Exhibit 1

132a

August 7, 1975

Mardorf Peach & Company Ltd.
52 Mark Lane
EC 3R 7Pc
London

Re: AGIA ERINI II - Charter Party
Dated: September 15, 1974 Between
Himoff Marine Maritime Enterprises
Mardoff Peach Company Ltd.
Our File: 75-0501

Gentlemen:

On behalf of our client, Himoff Maritime Enterprises Ltd., and in accordance with clause 17 of the subject charter party we hereby demand arbitration of the disputes which are the subjects of an action in the United States District Court in the Southern District of New York entitled TRAMP SHIPPING CO., INC., Plaintiff v. GOTAAS LARSEN A/S, EMERALD SHIPPING CORPORATION, THE SANKO STEAMSHIP CO. LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH LTD. Defendants - 75 Civ. 1549 HFW.

Since there is presently pending before the Court in the above cited action a motion by plaintiff for an order for a consolidated arbitration of all disputes among plaintiff and defendants and cross motions have been made with respect thereto and, in particular, the composition of the panel, our client will await the outcome of these motions before designating an arbitrator.

Very truly yours,

VINCENT, BERG, RUSSO
MARCICLIANO & ZAWACKI

JFC/cha

James F. Campise

cc: Polos, Tublin, Patestides & Stratakis
46 Trinity Place
New York, New York

Attention: Mr. John C. Hanolakis Esq.

Haight, Gardner, Poor & Havens
One State Street Plaza
New York, New York

Attention: Mr. R. Jarashow

Zock, Petrie, Reid & Curtin
10 Rector Street
New York, New York

Attention: Mr. Philip J. Curtin

Kirlin Campbell & Keating
120 Broadway
New York, New York

Attention: Mr. Lawrence Cohen

BEST COPY AVAILABLE

75-0501

Exhibit 2

134e

Sept 5, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

TRAMP SHIPPING CO., INC., :

Plaintiff, : Index No. 75 Civ. 1549 HFW

-against- :

GOTAAS-LARSEN A/S, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDORF PEACH LTD., : ORDER FOR APPOINTMENT OF PERSON TO SERVE PROCESS

Defendants. :

- -X

Upon the affirmation of the attorneys for defendants PARABOLA SHIPPING UK LTD., and HIMOFF MARITIME ENTERPRISES LTD. for an order appointing DAVID EALAND residing at Stone House 128-140 Bishopsgate London EC 2M 4JP England to serve the additional summons, complaint, and crossclaim herein on defendant MARDORF PEACH LTD. it appearing that DAVID EALAND is a qualified person over 21 years of age, and not a party to or an attorney in this action, and that substantial savings in time will result in such appointment;

IT IS ORDERED that DAVID EALAND be and hereby is appointed to serve the summons and complaint herein.

Dated: New York, New York
September 4, 1975

Raymond F. Burghardt
CLERK

Exhibit "2"

Exhibit 3

135a

September 4, 1975

Sinclair, Roche & Temperly
Stone House
128-140 Bishopsgate
London EC2M 4JP
ENGLAND

Attention: Mr. David J. Ealand

Re: TRAMP SHIPPING CO., INC.
v.
GOTAAS-LARSEN A/S, SANKO STEAMSHIP C
LTD., PARABOLA SHIPPING UK LTD.
HIMOFF MARITIME ENTERPRISES, LTD.
MARDORF PEACH LTD.
Index No. 75 Civ. 1549 HFW
Our File: 75-0501

Dear Mr. Ealand:

The captioned matter is litigation instituted in the United States District Court, Southern District of New York. We represent PARABOLA SHIPPING UK LTD., as well as HIMOFF MARITIME ENTERPRISES, LTD., in this action and are attempting to serve MARDORF PEACH LTD., with our Answer, Cross-claim, Summons and Complaint. They have no offices within the United States but their main office is located at 52 Mark Lane EC 3R 7PC London.

We would be most appreciative if you would have MARDORF served with the enclosed pleadings as there is outstanding a motion to dismiss which is returnable on September 22, 1975. For your convenience we have enclosed a copy of an affidavit of service as well as the ex-parte order authorizing you to serve MARDORF.

Kindly return the completed affidavit along with your bill for services as soon as possible so that we may respond to the reference motion.

Very truly yours,

VINCENT, BERG, RUSSO,
MARCIGLIANO & ZAWACKI

James F. Campise

JFC/cba
Enclosure

Exhibit 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC., Plaintiff,	:	75 Civil 1549 (HFW)
vs.	:	AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S MOTION FOR CONSOLIDATED ARBITRATION
GOTAAS-LARSEN A/S., SANKO SS CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDORF PEACH LTD. and EMERALD SHIPPING CORP., Defendants.	:	

STATE OF NEW YORK)
: ss
COUNTY OF NEW YORK)

LAWRENCE G. COHEN, being duly sworn deposes and says:

1. I am an attorney at law associated with the firm of Kirlin, Campbell & Keating, attorneys for Mardorf Peach & Co., Ltd. (hereinafter "Mardorf"). Although Mardorf is named as a defendant, no process was issued or served on Mardorf under plaintiff's complaint and there is no basis on which the court can obtain jurisdiction over Mardorf.

2. At a hearing on August 15th, the Court granted leave to Mardorf to file opposing papers on plaintiff's motion to consolidate. This motion had not been previously served on Mardorf, presumably because Mardorf was not and is not a party to the litigation. As of this writing, the plaintiff's motion papers have not yet been received although deponent has been furnished with a copy of a memorandum of law in support of the motion.

This affidavit and the accompanying memorandum of law is submitted in accordance with the leave of the court thus granted and Mardorf reserves its position that it is not a party to the litigation and that no proper demand for arbitration has been made upon it by the defendant, Himoff Maritime Enterprises (Himoff), the only defendant with whom Mardorf has any contractual relationship.

3. The plaintiff's complaint alleges that the AGIA ERINI II was time chartered successively, first by plaintiff to defendant, Emerald Shipping Corporation, and then by one defendant to another, the last charter in the chain being a charter by Himoff to Mardorf.

4. Plaintiff's complaint is that the vessel was "ordered" to the port of Churchill and that she sustained damage, approaching and leaving the port, to the extent of $2,700,000.00. Not being content with asserting its claims against its immediate charterer, plaintiff has resorted to the highly questionable procedure (for which there is no precedent) of attempting to "dragnet" into a single arbitration proceeding six successive charterers without regard to whether any or all sought or demanded arbitrations with their immediate contracting parties.

5. The only demand for arbitration by Himoff is a belated letter dated August 7, 1975, a copy of which was received by deponent, attached hereto as Exhibit A. This purported demand for arbitration is invalid and ineffective for many reasons. In the first place, it does not name an arbitrator in accordance with Clause 17 of the Mardorf charter. Secondly, there had been no previous claim or

dispute between Himoff and Mardorf and Himoff's letter does not specify any dispute between them except a general reference to claims asserted in the litigation by plaintiff. Finally, Himoff in effect nullifies its demand by stating in the last sentence of its letter that it will not name an arbitrator until the disposition of certain motions before the court.

Needless to say, if a proper demand for arbitration were made by Himoff of any dispute it has with Mardorf under the Mardorf charter, Mardorf would have no alternative than to submit thereto.

Even assuming a proper demand, there has been no motion by Himoff to compel Mardorf to arbitrate with it and it expressly stated that it was awaiting the outcome of motions before the court before even appointing an arbitrator. Furthermore, neither plaintiff nor any of the other defendants has any standing to make a motion to compel arbitrations between other parties. Under the Federal Arbitration Act, Title 9, U.S. Code, Section 4 it is provided only that a "party aggrieved" may "petition" for an order directing arbitration under an arbitration agreement to proceed "in the manner provided for in such agreement."

6. It is respectfully submitted that in the absence of a valid demand for arbitration by Himoff, and certainly in the absence of a motion or petition by Himoff, to compel the arbitration, the Court should not sua sponte undertake to compel Mardorf to arbitrate with Himoff simply because the plaintiff, removed by four or five charters from Mardorf, has made a motion to consolidate arbitrations not

previously demanded under a whole string of charters. Moreover, the remedy provided by 9 U.S. Code Section 4, provides only that in a proper case the court may order arbitration "in the manner provided" in the arbitration agreement. Clause 17 of the Mardorf Charter provides that disputes shall be submitted to three commercial men "one to be appointed by each of the parties hereto, and the third by the two so chosen xxx."

Plaintiff's motion is made in total disregard of the contract rights of Mardorf and other intermediate charterers.

7. Plaintiff's complaint incorrectly alleges that the successive charters are all of the same tenor and all provided for New York arbitration. While it is true that all charters are on the New York Produce Exchange form of charter and all provide for New York arbitration, it is there that the similarity ends.

8. All the charters, except the charter to Mardorf, are "period" charters, i.e. for a stated period of time. The Mardorf charter is a "trip" charter i.e., not for a "period" of time but for a "voyage" between named places.

Thus, all charters, except the Mardorf charter, described the term of the charter as follows:

> "WITNESSETH, that said Owners agree to let and the said Charterers agree to hire the said vessel, from the time of delivery, for about (fixed period, with certain options) ***".

The Mardorf charter on the other hand is for a "trip" described as follows:

> "WITNESSETH, that Owners agree to let and the said Charterers agree to hire the said vessel, from the time of delivery, for about one time charter trip via Churchill, Manitoba and St. Lawrence/East Coast Canada and/or Chaleurbay or U.S. North of Hatteras, first port of call, Churchill ***".

All charters, except the Mardorf charter, have a "safe port" warranty, because no ports are specifically named. The Mardorf charter is for specific ports, including Churchill, to which Himoff agreed to send the vessel without any undertaking by Mardorf as to their safety.

Thus, stripped of irrelevant language, all charters, except the Mardorf charter, provided in lines 18 through 35:

> "Vessel to be placed at disposal of the Charterers at (named place)***. Vessel on her delivery to be ready to receive cargo etc., to be employed, in carrying lawful merchandise etc. in such lawful trades, between safe port and/or ports, British North America (and other geographical areas) as Charterers or their agents shall direct ***". (emphasis added)

The words "between safe port and/or ports" constitute the safe port warranty.

Being a "trip" and not a "period" charter, the Mardorf charter had the words "between safe port and/or ports" deleted and hence did not contain a safe port warranty. Thus the Mardorf charter contains the following strike out of language appearing in the other charters as follows:

> "Vessel to be placed at disposal of the Charters at (sic) on dropping outward sea pilot, Hamburg.*** Vessel on her delivery to be ready to receive cargo etc., to be employed, in carrying lawful merchandise etc. in such lawful trades, ~~between safe port and/or ports, British North America (and other geographical areas)~~ as Charterers or their Agents shall direct ***".

9. The fact that Himoff and Mardorf deliberately agreed that Mardorf made no undertaking as to the safety of the port of Churchill is emphasized by the special typewritten Clause 34 in which Himoff exacted from Mardorf the extra insurance costs necessary to permit the vessel to go to Churchill. Clause 34 provides:

> "Charters to reimburse Owners with an amount up to $27,000.00 towards extra insurance assessed by the Underwriters, for trading Churchill. Owners eventually to support such extra insurance by Underwriters' invoice. Any excess over $27,000.00 is to be absorbed by the Owners. (emphasis added)

The head charter, dated December 18, 1969, between plaintiff and Emerald limited Emerald to trading "Within Institute Warranty Limits" (lines 29 and 32). These limits are attached hereto as Exhibit B and excluded trading to Churchill. The plaintiff, therefore, was not required to send the vessel to Churchill but evidently agreed to do so on being paid the extra insurance costs involved which Himoff passed on to Mardorf when Himoff specifically agreed to have the vessel call at Churchill. Attached as Exhibit C is a copy of the debit note for the extra insurance premium which turned out to be $27,103.44.

10. As shown above, the Mardorf charter does not warrant the safety of the port of Churchill and it is the only charter that does not warrant the safety of ports of call. Plaintiff's complaint alleges that plaintiff sustained damages as a result of "unsafe conditions prevailing in the port of Churchill". (emphasis added). Inasmuch as there was specifically no warranty by Mardorf in its charter as to the safety of the port, there are absolutely no common issues of

law or fact on this point between either Mardorf and plaintiff-owner or Mardorf and the various other defendants.

11. It follows that there can be no common issue as to indemnity between the various charterers, because, inasmuch as Mardorf made no warranty of safe port, Mardorf could breach no such warranty.

12. Absent any common issues of law and fact between Mardorf and other defendants or Mardorf and plaintiff any order directing Mardorf to proceed to a consolidated arbitration would be grossly prejudicial and there is no excuse for depriving Mardorf of its contractual right to arbitrate only with Himoff as its sole contracting party.

WHEREFORE deponent respectfully prays that the motion of plaintiff Tramp Shipping Co., Inc. for a consolidated arbitration be denied in all respects as pertains to Mardorf Peach & Co. Ltd.

Lawrence G. Cohen
LAWRENCE G. COHEN

Sworn to before me this
4th day of September 1975.

Nicholas Joseph Marcantonio
Notary Public

NICHOLAS J. MARCANTONIO
Notary Public, State of New York
No. 31-4517775
Qualified in New York County
Commission Expires March 30, 1976

Exhibit B

143a

LONDON INSTITUTE

15/5/72

INSTITUTE WARRANTIES

1. Warranted no:—
   (a) Atlantic Coast of North America, its rivers or adjacent islands,
      (i) north of 52° 10′ N. Lat. and west of 50° W. Long.;
      (ii) south of 52° 10′ N. Lat. in the area bounded by lines drawn between Battle Harbour/Pistolet Bay; Cape Ray/Cape North; Port Hawkesbury/Port Mulgrave and Baie Comeau/Matane, between 21st December and 30th April b.d.i.
      (iii) west of Baie Comeau/Matane (but not west of Montreal) between 1st December and 30th April b.d.i.
   (b) Great Lakes or St. Lawrence Seaway west of Montreal.
   (c) Greenland Waters.
   (d) Pacific Coast of North America its rivers or adjacent islands north of 54° 30′ N. Lat., or west of 130° 50′ W. Long.

2. Warranted no Baltic Sea or adjacent waters east of 15° E. Long.
   (a) North of a line between Mo (63° 21′ N. Lat.) and Vasa (63° 06′ N. Lat.) between 15th November and 5th May b.d.i.
   (b) East of a line between Viipuri (Vyborg) (28° 47′ E. Long.) and Narva (28° 12′ E. Long.) between 21st November and 5th May b.d.i.
   (c) North of a line between Stockholm (59° 20′ N. Lat.) and Tallinn (59° 24′ N Lat.) between 15th December and 15th April b.d.i.
   (d) East of 22° E. Long, and south of 59° N. Lat. between 15th December and 15th April b.d.i.

3. Warranted not North of 70° N. Lat. other than voyages direct to or from any port or place in Norway or Kola Bay.

4. Warranted no Behring Sea, no East Asian waters north of 46° N. Lat. and not to enter or sail from any port or place in Siberia except Nakhodka and/or Vladivostock.

5. Warranted not to proceed to Kerguelen and/or Croset Islands or south of 50° S. Lat., except to ports and/or places in Patagonia and/or Chile and/or Falkland Islands, but liberty is given to enter waters south of 50° S. Lat., if *en route* to or from ports and/or places not excluded by this warranty.

6. Warranted not to sail with Indian Coal as cargo:—
   (a) between 1st March and 30th June, both days inclusive.
   (b) between 1st July and 30th September, both days inclusive, except to ports in Asia, not West of Aden or East of or beyond Singapore.

CL. 28. For sale by JOSEPH LAZARD, 21 John Street, New York, N. Y. 10038 Printed in U.S.A.

— [illegible] to Kerguelen and/or Croset Islands or south of

THOS E. LEEDS COMPANY, INC.
INSURANCE BROKERS
AVERAGE ADJUSTERS
80 BROAD STREET
NEW YORK, N. Y. 10004

Exhibit C

144a

CABLE ADDRESS: "VANGARD"
TEL. (212) 425-0860

NO. 2289

November 21, 19 74

"AGIA ERINI II" &/or Owners

VESSEL: "AGIA ERINI II" - HULL, MACHINERY, ETC.

PERIOD OF COVER: December 14, 1973, Noon, EST,
December 14, 1974, Noon, EST.

COVER NOTE NO.	COMPANY	INTEREST	AMOUNT	RATE	PREMIUM
		ADDITIONAL PREMIUM DUE A/C BREACH OF TRADING WARRANTY VESSEL CALLED CHURCHILL - ARRIVED OCTOBER 15TH - SAILED OCTOBER 18TH.			
1993-73	As per Cover Note.	A/P 30% of Annual Premium -			$27,103.44

PAID
13/12/75 (2)

THOS. E. LEEDS COMPANY, INC.
80 BROAD STREET
NEW YORK, N. Y. 10004

D. Thornfield
3/12/75

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC.,

Plaintiff,

-against-

GOTAAS LARSEN A/S, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH LTD.,

Defendants.

75 Civil 1549

Before:

HON. HENRY F. WERKER,

District Judge

New York, September 22, 1975
10:30 a.m.

APPEARANCES:

POLES, TUBLIN, PATESTIDES & STRATAKIS, Esqs.,
Attorneys for Plaintiff,
By: Joan G. Poles, Esq.,
John Moulakis, Esq., of Counsel

HAIGHT, GARDNER, POOR & HAVENS, Esqs.,
Attorneys for Defendants
Gotaas Larsen A/S and
Emerald Shipping Corporation,
By: Charles Haight, Jr., Esq.,
Richard Jarashow, Esq.,of Counsel

APPEARANCES
(Continued)

ZOCK, PETRIE, REID, CURTIN & BYRNES, Esqs.,
Attorneys for Defendant
The Sanko Steamship Co., Ltd.,
By: Philip J. Curtin, Esq., of Counsel

VINCENT BERG, RUSSO, MARCIGLIANO & ZAWACKI, Esqs.,
Attorneys for Defendants
Parabola Shipping UK Ltd., and
Himoff Maritime Enterprises, Ltd.,
By: James Campise, Esq., of Counsel

KIRLIN, CAMPBELL & KEATING, Esqs.,
Attorneys for Defendants
Mardoff Peach Ltd.,
By: Lawrence G. Cohen, Esq., of Counsel

- - -

THE COURT: All right, gentlemen, who wishes to be heard first.

MR. COHEN: Your Honor, I believe I am the moving party here and I am going to attempt to let, in the interests of expediency, the briefs and the affidavits speak for themselves and address myself to several points which I wish to bring out which were not mentioned.

First of all, I'd like to address myself to the point of the standing of Gotaas Larsen and Emerald Shipping to submit briefs and papers in relation to these motions.

On page 2 of the memorandum on behalf of Gotaas Larsen A/S and Emerald Shipping, in opposition to the motion of Mardoff Peach & Co. for an order vacating service process, they state "The standing of Gotaas Larsen and Emerald to address the question arises out of their concern that Mardoff Peach as final charterer in the chain and potential ultimate indemnitor remain in the case." It is Mardoff's contention, your Honor, thatthere is no reason for the interest of Gotaas Larsen in that Gotaas Larsen has an immediate party below it in the form of Sanko Steamship whom we are informed is quite substantial and quite solvent. Gotaas Larsen has no immediate contractual relation at all with Mardoff. The person who might be interested in this would be Sanko Steamship Corporation. Sanko Steamship Corporation has not submitted any detailed papers in opposition to these motions, and we submit that it didn't because it was aware that it has no standing in ths issue on a cross claim by Himoff Maritime Enterprises, the persons with whom Mardoff Peach made their charter party.

One must ask oneself why is not Gotaas Larsen interested in, A, a motion by the plaintiff to consolidate arbitrations, why in this motion did Gotaas Larsen draw up a proposed order on the plaintiff's motion. The plaintiff made the motion, yet, interestingly enough,we have Gotaas Larse

drawing up a proposed order.

Secondly, the crossclaim by Himoff against Mardoff, why is Gotaas Larsen interested in this when neither party can Gotaas Larsen recover from. Gotaas can recover from only one party, and that is Sanko Steamship with which it has its charter.

The suggested reasons for Gotaas's interest as we outlined in our brief are that Gotaas Larsen , Emerald had a charter with the plaintiffs absolutely prohibiting them from sending Agia Erini into Port of Churchill. Gotaas has attempted to cloud the issues and cloud the issue with respect to its charter party with the plaintiff. Regardless of Clause 6 which Gotaas Larsen and Emerald alleging are the common issue, regardless of Clause 25 which they also allege as a common issue, Gotaas Larsen and Emerald we contend would be liable to the plaintiff for merely permitting that vessel to call at Churchill in violation of that charter party.

In order to try and clarify some of the parties here and straighten out some of these issues, we have to look at a chronological order of this proceeding. On or about March 27, 1975 the plaintiff filed a complaint and in that complaint -- that complaint was against all defendants demanding money damages and an order directing

consolidated arbitration. The plaintiff obtained jurisdiction over all parties except Mardoff Peach. On or about May 23, 1975 Himoff filed an answer to the complaint by the plaintiff Tramp and asserted a crossclaim against Mardoff, the party with whom it had a charter, alleging only a claim for money damages in paragraph 15 of its crossclaim and answer. On or about July 1, 1975 plaintiff made a motion for a consolidated arbitration with all defendants or in the alternative a motion compelling Gotaas Larsen to arbitrate with plaintiff pursuant to the charter party between Gotaas and the plaintiff.

Jumping back to the crossclaim, there have been several attempted services here of the crossclaim. The first attempt was on an unrelated Canadian corporation on or about May 28, 1975. We were here before your Honor on that as outlined in our papers.

The second service, attempted service, on Mardoff was pursuant to Rule 4-I on or about August 8th, and this was by mail.

We have been informed via the motion papers that a third attempt at service has now been made, on or about September 5, 1975, against pursuant to Rule 4. The second attempted service and the third attempted service are defective for the same reason. Rule 4 and service under

Rule 4 in a forein country is dependent upon the state requisites for service. This point of proper service is the key to the issue here, for without proper service this court cannot have jurisdiction over the person of Mardoff Peach. No process in the plaintiff's action was served on Mardoff Peach by the plaintiff. Therefore, there is no jurisdiction by the Court in respect to the complaint and the motions ancillary to the complaint. There has been no proper service by Himoff of the cross-claim, and therefore the court can have no jurisdiction on the corssclaim or any ancillary issues on that cross-claim.

Mardoff contends that there is a great ~~issue~~ distinction between whether the court would have jurisdiction over the person of Mardoff if service was properly effected and whether the court has jurisdiction when no proper service has been effected or can be effected. None of the responding affidavits or briefs attacks Mardoff's argument that there is no basis for service on Mardoff under Rule 4 and without this proper service we contend that this court can have no jurisdiction over the person of Mardoff Peach.

Going to the crossclaim of Himoff for a moment, this crossclaim in its allegation is alleged a claim for money damages only and made no attempt in the allegations

to compel an arbitration between Himoff and Mardoff. The complaint we contend is composed of the allegations, not the prayer for relief, the complainant must allege his grievance against a defendant. The prayer for relief is merely a request to the court for certain relief which the plaintiff feels is appropriate. The issue of the jurisdiction over the person we touched on in our brief also based on the arbitration clause. This must be grounded with respect to Himoff which is the person that Mardoff has the charter party with, with the failure of Mardoff to arbitrate after due notification and nomination of arbitrator by Himoff. 9 USC, Subsection 4, the Federal Arbitration Act, says that the motion to compel is to be brought by the party aggrieved.

We contend the only aggrieved party that can bring this motion is the party with whom Mardoff had the charter, Himoff. There has been no motion to compel by Himoff against Mardoff. Himoff has not even named an arbitrator. We have just been informed on Friday that there has been a petition filed in the bankruptcy court making Himoff an involuntary bankrupt. So we are at a loss to see what the status of Himoff is at this point.

Our final point is with respect to the consolidation proceeding. At the direction of this court on

August 15th we submitted a memorandum. Without leave of the court Gotaas Larsen also submitted a memorandum in opposition to our memorandum.

We contend that this should be disregarded. There is an interesting point on page 3 of Gotaas Larsen's brief on the consolidated arbitration that since, and it states in rough, that since all parties who favor consolidated arbitration stated that there are common questions of law and fact, it is therefore so without further ado, and therefore the Court should grant an consolidated arbitration. This statement is ludicrous. The interested parties therefore state there is a common issue and therefore there is a common issue? We contend it is not so. There is also a charter party which appears to be missing from the chain. There is an allegation that all charter parties are the same in all material respects. There is no evidence before this court that we are aware of, or any charter party from Parabola to Himoff nor that the terms of that charter party are the same in all material respects.

Therefore, assuming, arguendo, that there is a consistent chain in all material respects, we have a break in that chain between the various charterers and owners. In their brief on consolidated arbitration Gotaas Larsen also stated that the plaintiff's theory of cause of

action is for a breach of warranty, I believe it is safety of the port. That is on page 4. Safety of ports, is the wording used. The plaintiff's theory of cause of action, we contend, does not necessarily determine the ~~combination~~ common issue of law or fact. This is for the court to determine, not for the plaintiff's allegation. The plaintiffs, moreover, do not allege in their complaint that any of the defendants breached any warranty of safety of the berth. They merely state safety of the port.

In conclusion, we would request that this morning, in view of our comments on Gotaas Larsen's standing that no argument by Gotaas Larsen be allowed, and, moreover, that the papers submitted be disregarded. That is all we have at the moment.

THE COURT: Who is up next? Mr. Haight?

MR. HAIGHT: I don't know if I can, your Honor.

THE COURT: I have gotten into the position where I read everything and I listen to everyone.

MR. HAIGHT: I think, however, that counsel for Himoff might appropriate --

MR. CAMPISE: Not addressing myself to the Gotaas Larsen standing issue, if we could address ourselves to the issueof the bankruptcy I think at first, there was in fact a petition for involuntary bankruptcy which was

filed I believe on Thursday in the bankruptcy court. As to the other issues raised by Mr. Cohen, the charter party, I think we are prepared to state and we have by virtue of our pleadings stated that the charter party between Parabola and Himoff is in fact an oral charter party and it was identical with the charter party between Sanko and Parabola.

The issue of service, after the argument before your Honor there was a -- we did mail, registered mail, return receipt requested, and we did check the court's dockets, and we found out that the green card was in fact returned.

However, it was unsigned. So because we weren't sure as to the validity of that service, we took steps to have an ex parte order for appointment of a David Eland, a barrister in England, to effect personal service on Mardoff Peach. It was not a continuation of attempted services, it was just taking the precautionary measure that if there something defective which we did not concede, we did want to take proper measures to make sure that service was effected personally.

As yet, we have not received a return affidavit from Mr. Eland. We are confident that it will be served, and we would ask your Honor to pass on the validity of the

registered mail pursuant to 4-I which we did feel that Mardoff Peach did receive the pleadings, however they failed to sign for them and the postal authorities also failed to sign, so there was a compounding of possible errors. We also believe that in our crossclaim we did refer to the arbitration clause by reference, we didn't refer to it vague terms, and it was part of the pleadings, and not only in the demand for relief. However, it was in the pleadings and we did demand arbitration in the alternative, our own affidavits in opposition refer to that, and we believe that that was sufficient demand upon Mardoff Peach to respond to the claim for money damages or in the alternative to submit to arbitration. It was tantamount to a motion to compel arbitration, as we understand such a motion, and we believe that it is sufficient. As to the naming of an arbitrator, we have recommended to Himoff and Parabola an arbitrator, we have mentioned the name, and we are still awaiting the response. Because of the other difficulties which they are having we will have not yet heard as to that recommendation. We would be in a better position at a later period as to that.

Of course, we are going to name an arbitrator at some point. I believe that is all I would have to say on these issues.

MR. HAIGHT: If the Court please, with respect to the jurisdictional aspect of Mardoff's motion, it seems to us that it comes down to three simple questions, really.

One, did Mardoff Peach agree to arbitrate in New York disputes arising out of its charter party with Himoff. The answer to that is clearly yes and appears in the charter party. I don't think even my friend Mr. Cohen denies it, although he doesn't talk about it very much, preferring to pass over it in sort of a whisper, but it is unquestionably there.

The second question is, has a party with legal standing to do so, demanded that Mardoff Peach comply with its agreement to arbitrate disputes in New York. The answer again is yes. That demand has been made by Himoff with whom Mardoff Peach had its contract, as Mr. Campise has described, also it has been demanded by the plaintiff in respect of the plaintiff's perfectly proper and appropriate demand for a consolidated arbitration.

The third question, it seems to me, is whether or not Mardoff Peach has received notice of the demand to arbitrate in accordance with its contract by any method consistent with due process.

That last phrase is taken from the Court of

Appeals' decision in the Farr case which is cited in our memorandum and which says that when a party has agreed to arbitrate disputes in New York, that party has consented to jurisdiction and to venue in New York, and the only thing that remains to be done is giving the party notice by a method consistent with due process.

In the Farr case that method was registered mail. That has been followed in this case, although there seems to be some peculiarity with the green card, althouc even there I haven't heard Mr. Cohen say that his clients didn't received it in the mail. He says only that there is insufficient proof or no indication in the dockets of this court that Mardoff Peach received it. But he doesn't deny that they did so, and it seems to me a fair question to put to him.

If despite the irregularities of the green card it is the fact that Mardoff Peach received this by mail, then it seems to me that together with the arbitration clause is sufficient under the teaching of Farr. As far as the propriety of consolidated arbitration is concerned, I can only say again that there are quite clearly common questions of law and fact here. The plaintiff vessel owner specifically alleges and relies upon the safe berth clause, Clause 6 which is common to all the charters.

It is well established under the maritime law that the safety of the berth includes the waters which constitute the approaches to that berth. We haven't cited that case yet, but I would be happy to supply it to the court.

The leading case in the Supreme Court is where the designated berth was up the East River and the vessel had to have her mast cut off to get underneath a bridge, and that was held to be for the charterers a condition because it had designated a berth which could be reached only with this sort of surgery on the vessel.

So it is quite clear that there are common questions of law and fact,and, as we said the last time we were before your Honor on this point, to the extent that differences in the way the charter parties are drawn or insurance arrangements in the charter parties, if there are any differences, those are quite clearly for resolution by the arbitrators.

MR. CURTIN: Your Honor, just a word on behalf of the Sanko Steamship Company. Mr. Cohen has tried to make an argument that our failure to put in papers in opposition to his motion somehow puts us in agreement with him that Gotaas Larsen had no status on this motion. That's just not the case, your Honor. We didn't put in papers because we felt that both his motions are

in the nature of motions to reargue and that all the facts were before the court and there was no need for any further papers.

MR. POLES: Your Honor, I am for Tramp Shipping. I am taking a somewhat different tack on this whole picture. We have not filed papers because we take no position one way or another in this matter.

However, I would like to make a few remarks to the court. What is the purpose of arbitration? The purpose of arbitration is to get a speedy resolution of disputes between contracting parties in accordance with the arbitration clause. Certainly this Court has the power to consolidate. Certainly this Court decides whether it should consolidate based upon its discretion. Whether it exercises its discretion to order consolidation or not to order consolidation is determined by this one question: Is the fundamental purpose of an arbitration clause being furthered by the granting of consolidation. I can see arguments both ways. My personal feeling has been for many years against consolidation because I can see in certain instances by the application of technical, rigid rules where you can raise more problems than resolutions. Witness what is happening here.

It seems to me, and I don't care one way or another,

it seems to me that a good argument can be made here in favor of not including Mardoff Peach. That would avoid a very, very sticky problem as to the constitution of the panel, which we have raised and which we have appealed from your Honor's order of August 6th and your denial of reargument dated September 3rd and so much of your order dealing with the constituting of the panel.

That's really virginal territory that some time is going to be decided by the Court of Appeals or the United States Supreme Court. The question is, do we want this decided now by these two tribunals or do we want to say "Let's get on and resolve this dispute right here and let's worry about the academic problem some time in the future."

I would prefer personally to avoid the sticky problem and get out and resolve this matter quickly because the purpose of the arbitration clause is not going to be satisfied by continuing this battle up to the Court of Appeals and to the United States Supreme Court. So I would urge that it might be a good resolution to follow the alternati that we suggested in the beginning, namely to say "All right, Tramp, your direct privity of contract would go to Gotaas Larsen. Fight it out with Gotaas Larsen and then we will see down the line how the rest of the people work out their contractual differences with the other

parties."

They may find that after the resolution of the arbitration panel in the Tramp-Gotaas Larsen case is completed, the rest of the parties may come forward and settle their differences.

I don't know. Again, I really don't care which way. But I believe thatthis Court should give very, very serious consideration to the purpose of arbitration and are we really furthering that purpose by perpetuating this football team of lawyers here.

THE COURT: I will reserve, gentlemen.

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copy

#43272

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC.,

Plaintiff,

- against -

GOTAAS LARSEN, A.S., SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK, LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH, LTD., and EMERALD SHIPPING CORP. (Liberia),

Defendants.

MEMORANDUM DECISION

75 Civ. 1549 (HFW)

U.S. DISTRICT COURT FILED OCT 21 1975 S.D. OF N.Y.

HENRY F. WERKER, D. J.

The court adheres to its original decision dated August 8, 1975. The amended complaint in this action prays for "(b) An order be issued to compel all defendants to proceed to arbitration." This is the basis for holding Mardoff Peach within the jurisdiction of the court for purposes of compelling arbitration.

While Mardoff Peach's counsel has not admitted the second service of the summons and cross claim he has carefully skirted the issue. The court takes the position that Mardoff Peach has notice of the action and cross claim and is within the jurisdiction of the court by virtue of the arbitration clause which is contained in each of the charter parties.

The cross claim of Himoff Maritime Enterprises, Ltd. similarly prays for the ordering of arbitration as between it and Mardoff.

The jurisdictional question for this limited purpose is foreclosed against Mardoff Peach, Ltd. Insurance Company of North America v. S.S. Jotina, 1974 A.M.C. 1190 (2d Cir.). The motion to reargue is consequently denied.

With respect to the question of the common questions of fact and law it is the court's conclusion that the warranties contained in clauses 6 and 25 in each of the charters including the Mardoff Peach voyage charter are identical and give rise to the common questions of fact and law.

The question of the denial of a substantial right to be heard separately is in this court's opinion substantially answered by the Hidrocarburos case previously cited[1] and In the Matter of the Arbitration Between Vigo Steamship Corp. and Marship Corp., 26 N.Y. 2d 157, 257 N.E. 2d 624 (1970), cert. denied, 400 U.S. 819 (1970). Mardoff has failed, in this court's opinion, to make a sufficient showing as to the possible prejudice which would accrue to it. Lavino Shipping Co. v. Santa Cecilia Co. S.A. 1972 A.M.C. 2454 (S.D.N.Y., 1972).

The claim of absence of privity between Mardoff and other subcharters is controlled by Paragon Oil Co., Inc. v. Republic Tankers, S.A., 310 F.2d 169, 175 (2d Cir., 1962) and resolved against Mardoff.

Similarly plaintiff's suggestion that separate arbitrations take place is rejected. The defendant Mardoff Peach's claim that Himoff's demand for arbitration is insufficient under the circumstances obtaining in this case is specious.

In the interests of judicial and arbitrational economy, the prevention of possible inconsistent results and the minimization of time and expense to the parties, the court in its discretion orders the consolidated arbitration.

Since the court has now resolved all of the issues raised by Mardoff in opposition to the motion for a consolidated arbitration and the circumstances including dates have to be altered in the order previously submitted it is directed that a new proposed order be submitted in compliance with this Memorandum and the original memorandum providing for the nomination of arbitrators.

SO ORDERED.

Dated: New York, New York
October 16, 1975

U. S. D. J.

TRAMP SHIPPING CO., INC., v. GOTAAS LARSEN, A.S., 75 Civ. 1549

NOTES

1. Hidrocarburos y Derivado, C.A. v. Nereus Shipping, etc., 75 Civ. 463, S.D.N.Y. Memorandum and Order, March 21, 1975.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

TRAMP SHIPPING CO., INC.,

Plaintiff,

-against-

GOTAAS LARSEN, A.S., SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK, LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH, LTD., and EMERALD SHIPPING CORP. (Liberia),

Defendants.

- -x

NOTICE OF PRECAUTIONARY APPEAL BY MARDORF PEACH & CO., LTD., FROM "SO ORDERED" MEMORANDUM DECISION FILED OCTOBER 21, 1975.

75 Civ. 1549
HFW

SIRS:

NOTICE is hereby given that Mardorf Peach & Co., Ltd. (named above as Mardoff Peach Ltd.) hereby appeals to the United States Court of Appeals for the Second Circuit from so much of the "so ordered" memorandum decision of the Honorable Henry F. Werker, United States District Judge, filed October 21, 1975, in the United States District Court for the Southern District of New York, (adhering to the Court's original decision dated August 8, 1975), as directs the said Mardorf Peach & Co., Ltd. (hereinafter "Mardorf"), to participate in a consolidated arbitration with the plaintiff and the other named defendants, not withstanding the absence of any existing arbitration to which Mardorf is a party and the absence of any proceeding against Mardorf by an aggrieved party to compel arbitration in the manner provided in an agreement for arbitration pursuant to Title 9 of the United States Code, and jurisdiction obtained and a determination made in such Title 9 proceeding.

THIS appeal is precautionary in the event that the said "so ordered" memorandum decision, although expressly directing the submission of "a new proposed order", should be urged to be the document from which a timely appeal must be taken.

Dated: New York, New York
November 19, 1975

KIRLIN, CAMPBELL & KEATING

By_____
Attorneys for Mardorf Peach
& Co., Ltd.
Office and P.O. Address
120 Broadway
New York, New York 10005

TO: VINCENT, BERG, RUSSO, MARCIGLIANO
& ZAWACKI
Attorneys for Defendants & Cross-Complainants - HIMOFF MARITIME ENTERPRISES LTD. AND PARABOLA SHIPPING UK LTD.,
127 John Street
New York, New York 10038

HAIGHT, GARDNER, POOR & HAVENS
Attorneys for Defendants, GOTAAS LARSEN A/S & EMERALD SHIPPING CORPORATION
One State Street Plaza
New York, New York 10004

POLES, TUBLIN, PATESTIDES & STRATAKIS
Attorneys for Plaintiff, TRAMP SHIPPING CO., INC.
46 Trinity Place
New York, New York 10006

ZOCK, PETRIE, REID, CURTIN & BYRNES
Attorneys for defendant, SANKO STEAMSHIP CO., LTD.
19 Rector Street
New York, New York 10006.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC.,

Plaintiff,

-against-

GOTAAS-LARSEN A/S, EMERALD SHIPPING CORPORATION, SANKO STEAMSHIP CO. LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH LTD.,

Defendants.

75 Civ. 1549 HFW

NOTICE OF MOTION

S I R S :

PLEASE TAKE NOTICE that upon the affidavit of JOHN C. MAMOULAKIS, sworn to on December 29 , 1975, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court at Room , United States Courthouse, Foley Square, Borough of Manhattan, City of New York, on the 19th day of January, 1976, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard for an order:

(1) Directing all parties to proceed to the arbitration of all claims, counterclaims and cross-claims asserted in their pleadings in this action, provided, however, that in the event an order pursuant to the Bankruptcy Act, Title 11 U.S.C. staying the proceedings against Himoff Maritime Enterprises, Ltd. is presented to this Court as to the parties hereto, then the arbitration will proceed but the arbitrators shall not consider or make any award as to any claims against Himoff Maritime Enterprises, Ltd.;

(2) Providing that the parties shall proceed to choose a panel of arbitrators in accordance with provisions of the Stipulation entered into by the plaintiff, Gotaas-Larsen A.S., Emerald Shipping Corporation and The Sanko Steamship Co. Ltd.,

which Stipulation is attached as an exhibit to the aforesaid affidavit of JOHN C. MAMOULAKIS.

Dated: New York, New York
December 29, 1975.

Yours, etc.

POLES, TUBLIN, PATESTIDES & STRATAKIS

By: _____
A Member of the Firm

Attorneys for Plaintiff Tramp Shipping Co., Inc.
46 Trinity Place
New York, New York 10006
(212) 943-0110

TO:

KIRLIN, CAMPBELL & KEATING
120 Broadway
New York, New York 10005

VINCENT, BERG, RUSSO,
MARCIGLIANO & ZAWACKI
127 John Street
New York, New York 10038

Haight, Gardner, Poor & Havens
1 State Street Plaza
New York, New York 10004

Zock, Petrie, Reid, Curtin & Byrnes
19 Rector Street
New York, New York 10006

13,362 JCMgf

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC.,

Plaintiff,

-against-

GOTAAS-LARSEN A/S, EMERALD SHIPPING CORPORATION, SANKO STEAMSHIP CO. LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH LTD.,

Defendants.

75 Civ. 1549 HFW

AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOHN C. MAMOULAKIS, being duly sworn, deposes and says:

I am an attorney associated with the firm of Poles, Tublin, Patestides & Stratakis, attorneys for the plaintiff herein, and I am fully familiar with the proceedings had heretofore herein.

This action arises out of the damage which the plaintiff's vessel "AGIA ERINI II" suffered at the port of Churchill, Canada. The defendants are all charterers and subcharterers of the vessel under identical* charter party contracts, all of which provided certain warranties concerning the ports to be visited and also provided for arbitration of disputes in New York. The plaintiff has brought this action against the defendants alleging breach of the safe-port warranties and demanding a joint arbitration. Each defendant, with the exception of Mardoff-Peach, has made cross-claims alleging breach of the said warranties against its subcharterer and the subsequent subcharterers of the vessel.

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* Rates, of course, were different. Also, the last charter party between Himoff Maritime Enterprises, Ltd. and Mardoff Peach Ltd. specifically mentioned Churchill as the last port of loading.

Several motions have already been made and decided regarding the joint arbitration. The plaintiff first made a motion on July 20, 1975 for an order to proceed to a consolidated arbitration of all claims in this case and for a stay of all discovery pending the hearing of the case by the arbitrators. The order for which the plaintiff moved would also provide for the appointment of a three-member panel of arbitrators, one arbitrator to be appointed by the plaintiff, one by the defendants, and one by the two arbitrators thus appointed. By its Memorandum Decision and Order of August 4, 1975, this Court has decided that all claims and issues in this case are to be submitted by all parties to a joint arbitration and that all discovery be stayed pending the arbitration. It also provided that a panel of five members would hear the case, to be chosen as follows: one arbitrator appointed by plaintiff; one by the charterers other than Mardoff-Peach and one by Mardoff-Peach; the remaining two to be chosen by lot from a list of six names submitted by the first three arbitrators (two names each).

The plaintiff on August 14, 1975 moved for the modification of the Court's order concerning the composition of the panel but this the Court denied. The plaintiff thereupon took an appeal from this part of the Court's order.

Mardoff-Peach has also moved this Court for an order quashing service of process upon it and for a ruling that it is not obliged to take part in the joint arbitration. By its Memorandum Decision of October 16, 1975, this Court denied Mardoff-Peach's motion and ordered Mardoff-Peach to submit to take part in the consolidated arbitration of the claims in this case. Mardoff-Peach has taken a protective appeal from this Memorandum

Decision pending the settlement of the order.

During discussion had among counsel for all the parties at a pre-hearing conference in the plaintiff's appeal and subsequently, counsel for all parties expressed the opinion that it would be desirable to find a formula for choosing a panel of arbitrators which all parties would accept as neutral and fair, and thus avoid the litigation of the plaintiff's appeal. After discussions among counsel, the formula embodied in the Stipulation was arrived at. It provides for choosing of three arbitrators who are each acceptable to all parties in such a manner as not to give any of the arbitrators the impression that he was appointed or represented by any particular party or side of the disputes. If the parties are unable to agree as to any of the three arbitrators, then Judge H. F. Werker would make the appointment.

In the initial discussions held for the purpose of arriving at the formula at the offices of the Staff Counsel of the Second Circuit Court of Appeals, counsel for Mardoff-Peach indicated that he would favor such a formula, although he also said that he was unable to commit his party, especially since its motion mentioned above was still pending at the time. Subsequently, counsel for Mardoff-Peach refused to join in the Stipulation, even with the provision that it would not be obliged to participate in the arbitration in the event that it won its appeal. Counsel for Mardoff-Peach told the writer that the formula of the Stipulation was neither favored or disapproved by him, and that he simply refused to take any part or interest therein pending his party's appeal.

Counsel for all other parties agreed to the Stipulation and also agreed that when the order for the arbitration was settled, the provisions as to the composition of the panel would be those of the Stipulation rather than those of the Court's decision of August 4, 1975. The Stipulation was thereupon typed and circulated for signatures. The Stipulation has been signed

by counsel for the plaintiff, Emerald, Gotaas-Larsen and Sanko. At about the same time as it was sent for signature to Messrs. Vincent, Berg, Russo, Marcigliano & Zawacki, counsel for Parabola and Himoff (these two are related firms), that firm also received knowledge that proceedings for involuntary bankruptcy had been started against Himoff Maritime Enterprises, Ltd. Counsel for Himoff thereupon informed me and counsel for all parties that as a result of this turn of events, he was uncertain as to what authority he had to proceed in this action, and asked for time to try to obtain instructions. The parties let pass several weeks without receiving any news concerning any instructions to Vincent, Berg, Russo, Marcigliano and Zawacki.

In view of the length of time during which the question of the consolidated arbitration has been pending without any definitive resolution, it seemed best to counsel for the plaintiff, after consultation with counsel for Emerald, Gotaas-Larsen and The Sanko, to bring this motion and ask this Court for an order which:

(1) would make some provision for the eventuality that an order is issued staying all actions and proceedings against Himoff, and would prevent this arbitration from being permanently stalled as a result thereof; and

(2) would embody the parties' agreement concerning the manner of choosing a panel of arbitrators.

The Order submitted herewith would do these things and would also:

(1) permit the plaintiff to withdraw its appeal;

(2) provide a definite order from which defendant Mardoff-Peach can appeal, since it has decided to appeal the court's decision that it is obligated to arbitrate; and

(3) permit the arbitration to proceed when that appeal is decided, either with or without Mardoff-Peach.

For the above reasons, plaintiff's counsel believes that the Court should grant this motion and sign the draft order submitted with these motion papers.

/s/
JOHN C. MAMOULAKIS

Sworn to before me this
29th day of December, 1975.

Notary Public

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

TRAMP SHIPPING CO., INC., :

Plaintiff, :

- against - : STIPULATION

GOTAAS LARSEN, A.S., THE SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDORF PEACH & CO., LTD., : 75 Civ. 1549 (HFW)

Defendants. :

- - - - - - - - - - - - - - - - - - - -x

The undersigned parties to the above-entitled action hereby stipulate and agree:

1. All claims, counterclaims and cross-claims asserted by the parties hereto in their pleadings in this action shall be submitted to a joint arbitration in New York before three arbitrators who shall be chosen as follows:

2. A first list (List A) shall be drawn up which shall be composed of the names of the members of the Society of Maritime Arbitrators of New York, and of the names of such other persons as any of the parties hereto may add, provided that all names added shall be commercial men conversant with shipping. Any party may add any number of names it wishes.

3. All names to be included in List A shall be mailed or delivered to the offices of the attorneys for the plaintiff no later than ~~ten (10)~~ days after the date hereof. The attorneys for plaintiff shall compile List A from the names thus submitted or added by themselves.

4. Copies of List A shall then immediately be forwarded by the attorneys for the plaintiff to the attorneys for the parties hereto. Each party shall strike from the list the name(s) of any person(s) whom it considers unacceptable as arbitrators. Not later than ten (10) days

after receipt by the attorneys for the parties of copies of List A, the attorneys for all parties shall meet for the purpose of (a) disclosing to each other the name(s) of any person(s) whom any party has considered unacceptable as an arbitrator; and (b) in order to agree, if possible, upon three persons, acceptable to all parties, who will constitute the arbitration panel. At the same time, attorneys for all parties will agree, if possible, upon three substitute arbitrators, in order of preference, in the event that any of the three arbitrators intiially designated may be unable to serve.

5. Following the selection of the three initial arbitrators, and the three substitute arbitrators, in the manner provided in the preceding paragraph of this Stipulation, the attorneys for all parties shall address a joint written communication to the three initial arbitrators so selected, inquiring as to whether those arbitrators are willing to serve. In the event of the refusal of any of the three initial arbitrators to serve, counsel for the parties shall address a comparable joint written communication to the substitute arbitrators, in the order of indicated preference, inquiring as to the willingness of such individuals to serve. In the event that a panel of three arbitrators is not achieved as the result of these inquiries, then the attorneys for the parties will meet again promptly in order to attempt to select additional substitute arbitrators, whose availability to serve will then be inquired into in the manner provided above.

6. If, following the consultations referred to in the preceding paragraphs of this Stipulation, the attorneys for the parties shall fail to agree as to any or as to one or two of the arbitrators, then the panel shall be selected or completed by submitting forthwith a list

of those individuals designated as acceptable to all parties to The Honorable Henry F. Werker, United States District Judge, with a prayer that he complete the panel from the persons so designated.

7. All parties hereto and their attorneys agree that the process of selection as described above shall be carried on confidentially. No person shall discuss the lists or the attorney's comments or action with respect to the proposed names with any other person at any time before or after the arbitration.

8. This stipulation shall be submitted to the United States District Court in order to be made an order of the Court. When it is so ordered by the Court then this order shall supersede the order of the Court in this case entered 6th August 1975, or any subsequent order, in so far as said orders may be inconsistent herewith.

POLES, TUBLIN, PATESTIDES & STRATAKIS

By: _____
Attorneys for
TRAMP SHIPPING CO., INC.

HAIGHT, GARDNER, POOR & HAVENS

By: _____
Attorneys for
GOTAAS LARSEN, A.S. and
EMERALD SHIPPING

ZOCK, PETRIE, REID, CURTIN & BYRNES

By: _____
Attorneys for
THE SANKO STEAMSHIP CO., LTD.

VINCENT, BERG, RUSSO, MARCIGLIANO & ZAWACKI

By: _____
Attorneys for
PARABOLA SHIPPING UK LTD.
and MINOFF MARITIME
ENTERPRISES, LTD.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC.,	:	
Plaintiff,	:	
- against-	:	AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S MOTION
GOTAAS-LARSEN A/S, EMERALD SHIPPING CORPORATION, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING U.K., LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH LTD.,	:	75 Civ. 1549 HFW
Defendants.	:	

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

LAWRENCE G. COHEN, being duly sworn, deposes and says:

1. I am an attorney at law associated with the firm of Kirlin, Campbell & Keating, attorneys for Mardorf Peach & Co., Ltd., (hereinafter "Mardorf") and I am familiar with the pleadings and proceedings heretofore had herein.

2. The complaint, filed March 27, 1975, claimed damages to plaintiff's vessel, the AGIA ERINI II, and sought two-fold relief: (1) a judgment for money damages in the sum of $2,700,000 and (2) alternatively, an unprecedented order compelling the consolidation of non-existent arbitration proceedings.

3. To put this motion in perspective as far as Mardorf is concerned requires a brief review of proceedings to date. To begin with, for convenience of reference, there is annexed hereto as Exhibit A, a chart showing the chain of charterers here involved.

4. Although Mardorf was named as a defendant, plaintiff did not have the summons and complaint served on Mardorf, probably for the reason that plaintiff appreciated this could not be done validly.

5. As originally filed, the complaint omitted one of the charterers in the chain in that Emerald was not included. However, by petition dated May 2, 1975, Emerald sought to intervene on the ground that "if plaintiff is entitled to collect damages from Gotaas-Larsen A/S for negligence and breach of charterparty warranty, which is expressly denied, then Gotaas-Larsen A/S is entitled to collect by way of indemnity from Emerald for negligence and breach of charterparty warranty." The petition was unopposed and granted.

6. When the defendants over whom the court had jurisdiction answered the complaint, Gotaas and Emerald cross-claimed against the other defendants and, among other relief, prayed that "an order be issued to compel defendants to proceed to arbitration of the disputes herein in a consolidated arbitration." Parabola, however, did not cross-claim against Himoff. Indeed there has been no showing of any written arbitration agreement between Parabola and Himoff necessary to give Parabola an enforceable right to arbitration under Section 2 of the Federal Arbitration Act, (9 U.S.C. §2.)

In any case, Himoff and Parabola filed a joint answer containing a cross-claim against Mardorf in which they alleged that if Himoff or Parabola were liable to plaintiff, Mardorf should indemnify Himoff or Parabola. In the "Wherefore" clause they prayed that, if arbitration were ordered between Parabola or Himoff and any other party, arbitration should be ordered also between Himoff and Mardorf "pursuant to their Charter Party agreement dated September 13, 1974... ."

7. On July 20, 1975, plaintiff made a motion for a "consolidated arbitration" and for a stay of the suit.

8. Himoff's cross-claim was the first attempt to bring Mardorf before the court by arranging personal service of the cross-claim (without any process) on Mardorf Peach & Co. (Canada)

Ltd., which was not an agent of the defendant Mardorf. A motion was made on July 30, 1975, to set aside this attempted service and to dismiss the cross-claim for lack of jurisdiction.

While this motion was pending, the court filed a memorandum decision and order on August 6, 1975, on plaintiff's motion for a "consolidated arbitration" directing all parties "to participate in a consolidated arbitration proceeding of all issues in the case" and directing Himoff to perfect jurisdiction over Mardorf. This memorandum and order also provided "one arbitrator is to be selected by plaintiff, one arbitrator is to be selected by the charterers other than Mardorf and one is to be selected by Mardorf; the remaining two are to be selected by lot from a list of no more than six submitted by the three arbitrators thus chosen (two each)."

The court's memorandum concluded with the direction:

> "This action is stayed pending arbitration. Submit order accordingly."

9. On August 7th, before the Mardorf motion was heard, Himoff's counsel wrote a letter to Mardorf demanding arbitration but failed to name an arbitrator. Himoff's counsel also arranged for the mailing of an "additional" summons, the complaint and Himoff's answer and cross-claim to Mardorf in London pursuant to F.R.C.P. Rule 4 (i). On August 19th, the court filed a memorandum endorsed on Mardorf's motion papers stating "Motion to dismiss is denied. Motion to vacate service is moot due to service F.R.C.P. 4 (i)."

A proposed order on the court's memorandum filed August 6th was submitted by attorneys for Gotaas-Larsen but has never been signed or entered.

10. On August 29th, Mardorf moved the Court for a rehearing of its earlier motion and, alternatively, for an order vacating the second attempted service of the "additional" sum-

mons and Himoff's cross-claim and dismissing the complaint and cross-claim for lack of jurisdiction for the reason, among others, that Mardorf, a foreign corporation, had no agents here and never transacted any business in this jurisdiction. On the argument of this motion the court directed that Mardorf submit a memorandum of law and affidavit in response to plaintiff's motion for a "consolidated arbitration" which was the subject of the court's memorandum decision filed August 4th. These were filed on September 5, 1975.

11. On September 17th plaintiff filed a notice of appeal from so much of the court's decision filed August 6th as prescribed the composition of the panel of arbitrators.

12. On September 18th an involuntary petition in bankruptcy under Section 59 of the Bankruptcy Act was filed in this court against Himoff.

13. On September 22nd argument was had on Mardorf's pending motion, among other things, to vacate the second attempted service of Himoff's cross-claim and, at that time, this affiant informed the court of the bankruptcy proceedings filed against Himoff.

14. On September 26th Himoff filed a petition for a rearrangement under Chapter XI of the Bankruptcy Act.

15. On October 16th the court rendered its decision (filed October 21st) on Mardorf's pending motion, denying the motion in all respects and directing that a new proposed order be submitted "in compliance with this and the original memorandum providing for the nomination of arbitrators."

As no formal order was presented to the court or signed, Mardorf, on November 19th, took a precautionary appeal from so much of the court's Memorandum Decision, filed October 21st, 1975, as directed Mardorf to participate in a consolidated arbitration with plaintiff and the other defendants. This appeal is still pending.

16. Plaintiff's present motion seeks an order

1. directing all parties to proceed to arbitration (with the possible exception of Himoff),

2. before a panel of three (3) commercial men chosen in accordance with a stipulation to which three of the parties are unable to agree.

17. According to the moving affidavit counsel for Gotaas-Larsen, Emerald and Sanko, who have signed the stipulation, favor proceeding as proposed by plaintiff's motion.

However, it appears from the affidavit of Charles S. Haight, Jr., submitted on behalf of Gotaas and Emerald, that these defendants favor involving Himoff's trustee in bankruptcy.

Further, the moving affidavit (bottom of p. 14) suggests that the arbitration proceed while Mardorf appeals the court's decision that it is obligated to arbitrate.

In the memorandum of law submitted herewith, it will be shown that, contrary to the contentions made on behalf of Gotaas and Emerald, arbitration proceedings against Himoff are stayed. Even assuming Himoff's trustee were otherwise free to partake in the arbitration proceedings, it is unlikely that he could properly forego the objection that defendant, Parabola, has never cross-claimed against Himoff nor demanded arbitration with Himoff and the further objection that a written agreement is indispensable to Parabola's right to compel arbitration with Himoff since the charter between Parabola and Himoff was "oral".

18. The final resolution of the legal issues presented by the oral charter between Parabola and Himoff, the Himoff bankruptcy and the court's jurisdiction over Mardorf, to mention only a few, could well outlast the Himoff bankruptcy itself and the arbitration hearings as well unless the consolidation is

confined to plaintiff and those charterers (down to and including Parabola) among whom there is clear privity and a community of issues.

19. A pre-hearing conference on plaintiff's appeal was held before the Staff Attorney for the Second Circuit Court of Appeals on October 9, 1975, and all parties were directed to appear. During that conference a discussion was had concerning a formula, other than that ordered by this court in its decision filed August 6, 1975, for choosing a panel of arbitrators. This affiant maintained the position that Mardorf Peach was contesting the efforts being made to make it a party to these proceedings and any comments and expressions of opinion by this affiant were not binding on Mardorf and were submitted solely at the insistence of the Staff Attorney for the Second Circuit.

This affiant at no time indicated either approval or disapproval of an amended method of choosing arbitrators for a consolidated arbitration in which Mardorf would not take part.

20. In the moving affidavit, it is stated that counsel for all other parties agreed to an amendment of the court ordered arbitration panel selection and;

> ...agreed that when the order for the arbitration was settled, the provisions as to the composition of the panel would be those of the Stipulation rather than those of the Court's decision of August 4, 1975. (Emphasis added)

Despite the fact that this court's decision, filed on October 21, 1975,

> ...directed that a new proposed order be submitted in compliance with this Memorandum and the original memorandum providing for the nomination of arbitrators

no such proposed order has been submitted by either the moving party, who was the plaintiff, or any of the other named defendants.

21. Needless to say, if there is any break in the chain of privity, there can be no consolidation of the separate arbitrations below the break in the chain. Here there are clear breaks in the chain and several other possible breaks. For one, there has been no showing of any enforceable right of arbitration by Parabola against Himoff because the charter between them is oral and hence no written arbitration agreement which is indispensable to an enforceable right to arbitrate. Furthermore, there has been no showing of any demand for arbitration by Parabola against Himoff nor any cross-claim by Parabola against Himoff claiming arbitration.

Even if these ruptures in the chain could be healed, there would remain the question whether an arbitration can proceed against Himoff in view of the bankruptcy stay as more particularly outlined in the memorandum submitted herewith.

Finally, if, for any reason, no arbitration proceeding lies against Himoff, there can be no basis on which Himoff (or its trustee) can assert a claim for indemnity against Mardorf. This also is more fully outlined in the memorandum submitted herewith.

In addition, Mardorf is contesting on its appeal the Court's direction that it participate in the consolidated arbitration for the various jurisdictional reasons asserted by Mardorf in its motions before this court, as outlined above.

22. Counsel for Gotaas and Emerald were impelled by the need for an unbroken chain of privity to file the petition on behalf of Emerald to intervene in this proceeding on the grounds that "if plaintiff is entitled to collect damages from Gotaas-Larsen A/S for negligence and breach of charterparty warranty, which is expressly denied, then Gotaas-Larsen A/S is entitled to collect by way of indemnity from Emerald for negligence and breach of charterparty warranty."

23. The essence of a so-called "consolidated arbitration" is the consolidating of arbitrations arising under separate contracts to which one of the parties to each contract is also a party to another contract covering the same subject matter thus forming a continuous chain of parties and contracts having substantially the same relevant provisions under which disputes have arisen presenting common questions of law and/or fact. This was the case In The Matter of Arbitration Between Vigo Steamship Corp. and Marship Corp., 26 N.Y. 2d. 157,257 N.E. 2d. 624 (1970) cert denied 400 U.S. 819 in which the procedures for consolidating arbitrations were evolved. When the arbitrators rendered their award in that matter, they correctly followed the privity of the contracts and stated:

> There has been much said about the fact that this is one of the first consolidated arbitrations and, as commercial men we cannot help but concur with the Courts as to the practicability of such a proceeding where there are common questions to be decided. However, it would appear that any Award in these circumstances must follow the privity of the contracts involved...
> (Emphasis added)

SMA No. 677 (Attached as Exhibit B)

Obviously, if the arbitrators cannot for any reason make an award in favor of Parabola against Himoff, they cannot make an award for indemnity in favor of Himoff against Mardorf.

WHEREFORE, it is respectfully submitted that the consolidation of arbitrations be confined to the plaintiff and those charterers, down to and including Parabola, among whom there is clear privity and a community of issues and that the motion be denied and the complaint dismissed as to the defendants

Affidavit of Lawrence G. Cohen

186a

Himoff and Mardorf.

Lawrence G. Cohen
LAWRENCE G. COHEN

Sworn to before me

this 16th day of January, 1976.

[illegible] VANAUGH
Notary Public, State of New York
No. 31-[illegible] in N. Y. County
Term Expires March 30, 1977

Notary Public

EXHIBIT A

Chain of Charters - AGIA ERINI II

Tramp Shipping Co., Inc., - Owner — Poles,T,P,& S

T/C 12/18/69
Safe Ports

Gotaas-Larsen A/S - First Charterer — Haight,G,P,& H

T/C 2/22/74 (Relet letter)
Safe Ports

Emerald Shipping Corporation - Second Charterer — Haight,G,P,& H

T/C

Sanko Steamship Co., Ltd., - Third Charterer — Zock,P,R& C

T/C 6/12/74
Safe Ports

Parabola Shipping U.K., Ltd. - Fourth Charterer — Vincent,B,R,M,&Z

z
z
z
Alleged Oral Charter
z (Date and terms unknown)
z (No written arbitration clause)
z
z
z
z

Himoff Maritime Enterprises, Ltd. -Fifth Charterer — Vincent,B,R,M&Z

T/C 9/13/74
Named Port

Mardorf Peach & Co., Ltd. - Sixth Charterer — Kirlin, C & K

EXHIBIT B

In the Matter of the
Consolidated Arbitration of Disputes

between

Marship Corporation of Monrovia,
Owner of the M.V. NICOLAS MARIS,
Claimant

and

Vigo Steamship Corporation,
Time Charterers,

and

Frederick Snare Corporation,
Voyage Charterers,
Respondents.

AWARDS
(Time Charter Party dated 7/25/66)
(Voyage Charter Party dated 5/15/67)

Before: Captain Ivo Matkovic, Chairman
Captain George T. Stam, Appointed by Voyage Charterers
Lloyd C. Nelson, Appointed by Vessel Owners and Time Chartered Owners

Appearances: Healy & Baillie, for Owners
Nicholas J. Healy and Richard T. O'Connell, of Counsel

Kirlin, Campbell & Keating for Time Charterers
David A. Nourse of Counsel

Poles, Tublin, Patestides & Stratakis, for Voyage Charterers
Carist Stratakis and Patrick V. Martin, of Counsel

On July 25, 1966 Marship Corporation of Monrovia (hereinafter referred to as "Owners") agreed to time charter (New York Produce Exchange Standard Form with amendments) the Motor Vessel NICHOLAS MARIS to Vigo Steamship Corporation (hereinafter referred to as "Time Charterers") for a period of 12 months minimum to 15 months maximum, actual period at Time Charterers' option.

On May 15, 1967 Time Charterers agreed to Voyage Charter (Gencon Form with amendments) the M.V. NICHOLAS MARIS to Frederick Snare Corporation (hereinafter as Voyage Charterers). This Charter was for five voyages in direct continuation with cargoes of "Sand, Rock and Aggregate up to about 10 ten pieces" from Hudson River, New York to Nassau, Bahamas. Performance under this contract commenced June 7, 1967 and was completed on or

about November 11, 1967.

On November 11, 1967 Owners, Time Charterers and Voyage Charterers entered into an agreement (Owners' Ex 2-A) in respect to damages which a joint survey concluded occurred during the voyage charter period. This agreement in part read:

> "The cost of repair of such damage agreed, estimated and compromised by such surveyors and interested parties at U.S.$335,000.00"

Owners sought to recover $335,000.00 and demanded arbitration with the Time Charterers who in turn demanded arbitration with Voyage Charterers. Time Charterers proposed to Voyage Charterers a consolidated arbitration which was refused and the parties sought a ruling on the question by the New York Supreme Court. This record need not be burdened with details of these proceedings. Suffice to say the Court of Appeals of the State of New York under date of February 19, 1970 ruled in favor of Time Charterers and on April 7, 1970 an order to go forward with this consolidated arbitration was filed by the Court.

Thereafter nine hearings were conducted by the Panel during which all interested parties were given an opportunity to bring before the Panel such documents, evidence and witnesses dealing not only with the November 11, 1967 agreement but also the complete factual picture leading up to the signing of the Time and Voyage Charter agreements, the delivery and re-delivery of the vessel on Voyage Charter; the Time and Voyage on hire and Voyage off hire surveys, the circumstances and causes of damages found to exist on board at redelivery by Voyage Charterers as well as conditions claimed to have existed on board prior to the Voyage Charter period and, finally the repair and classification history of the vessel since November 1967. Summary briefs and reply briefs were exchanged and the proceedings concluded.

The Panel has carefully considered all the testimony and evidence offered and have studied the summations of Counsel and we are of

the opinion that most probably the agreement reached at Nassau on November 11, 1967 (Owners' Ex 2-A) should govern our decision in this dispute, for it represented the outcome of the settlement procedure specifically set forth in Clause 26 of the Voyage Charter (Voy. Ch. Ex. I). However, to give our approval to this payment ($335,000.00) would in our opinion be morally indefensible and so for the following reasons we have reluctantly decided to look behind this agreement:

1. We do not believe the agreement gave proper consideration to pre-existing tank top damages and ordinary wear and tear.

2. The agreement was predicated on actual repairs being carried out at prevailing United States prices.

3. The repairs have not been carried out in full and appear not to effect the class of the vessel.

4. The Owners have had an opportunity to carry out repairs in areas where costs are substantially less than United States costs.

5. Approval of the agreement without reservation would have, in our opinion, precluded the Panel from establishing the fair measure of liability that Time Charterers should bear in this dispute.

In reaching our decision we have concluded the following:

A. Voyage Charterers did on many occasions negligently load, stow and discharge cargoes of rock causing damages to the M.V. NICOLAS MARIS reflecting a serious depreciation in value of the vessel.

B. Voyage Charterers and Time Charterers effectively waived any requirement by the vessel to give written notices of damages as they occurred during the Voyage Charter period.

C. Time Charterers must share some responsibility for willfully Voyage Chartering a vessel which was in some respects incapable of safely loading and carrying the cargoes specifically set forth in the Voyage Charter.

It is the unanimous decision of this Panel that Owners should receive the sum of $240,000.00 as compensation for the unfair and unreasonable depreciation sustained by their vessel during the Voyage Charter period.

There has been much said about the fact that this is one of the first consolidated arbitrations and, as commercial men we cannot help but concur with the Courts as to the practicability of such a proceeding where there are common questions to be decided. However, it would appear that any Award in these circumstances must follow the privity of the contracts involved and for this reason we Award and call upon the Time Charterers to remit to the Vessel's Owners the sum of $240,000.00. We further rule that the Voyage Charterers are directly liable to the Time Charterers for a great proportion of their loss to the vessel's Owners and we therefore further Award and call upon the Voyage Charterers to remit to the Time Charterers the sum of $153,000.00.

Inasmuch as our aforementioned Awards are based upon a fair and reasonable depreciation of the vessel, no interest was considered or allowed.

The Panel's fee for rendering these Awards is $9,000.00 and liability to the Panel for same is joint and several even though it is to be settled in the first instance by the Owners, Time Charterers

and Voyage Charterers each remitting to each Arbitrator the sum of $1,000.00. The cost of the hearing transcripts is to be jointly shared.

Respectfully submitted,

Ivo Matkovic

George T. Stam

Lloyd C. Nelson

Dated at New York, N. Y.
January 10th, 1972

COPY

----------193-4a --------x

Trans Shipping

Plaintiff,

-against-

Cotaas-Larsen A/S, Emerald Shipping et al

Defendants

----------x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

NANCY KAVANAUGH, being duly sworn, deposes and says:

On the 16 day of JANUARY, 1976, I served the within AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S MOTION upon the attorneys named in the annexed list, the attorneys for the above-named plaintiff by depositing a true copy of the same securely enclosed in a post-paid wrapper in a Post Office Box regularly maintained by the United States Government at 120 Broadway, New York, New York, directed to said attorney for the plaintiff at No. the addresses indicated in annexed list, New York, that being the last known address designated for the purpose on the preceding papers in this action or the place where they kept an office.

Nancy Kavanaugh

Sworn to before me this
16 day of January, 1976

Notary Public

NICHOLAS L. M. SANTONIO

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC.,	75 Civ. 1549 HFW
Plaintiff,	AFFIDAVIT
- against -	
GOTAAS-LARSEN A/S, EMERALD SHIPPING CORPORATION, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH LTD.,	
Defendants.	

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

CHARLES S. HAIGHT, JR., being duly sworn, deposes and says:

1. I am a member of the firm of Haight, Gardner, Poor & Havens, attorneys for defendants Gotaas-Larsen A/S and Emerald Shipping Corporation. I make this affidavit in response to the motion of plaintiff Tramp Shipping Co., Inc., for an order directing the parties hereto to proceed to a consolidated arbitration, in accordance with certain provisions set forth in the Order submitted by the plaintiff.

2. Defendant Gotaas-Larsen and Emerald make no objection, on the contrary they endorse, the provision in the second decretal paragraph of the Order submitted by the plaintiff. This paragraph provides the mechanics by which a panel of three arbitrators, agreed to by all parties or appointed by the Court, will be selected.

3. However, we do not fully agree with the suggested first paragraph of the Order, which provides:

> ". . . that all parties proceed to the arbitration of all claims, counterclaims and cross-claims asserted in their pleadings in this action, provided, however, that in the event an order pursuant to the Bankruptcy Act, Title 11 U.S.C. staying the proceedings against Himoff Maritime Enterprises, Ltd. is presented to this Court or to the parties hereto, then the arbitration will proceed but the arbitrators shall not consider or make any award as to any claims against Himoff Maritime Enterprises, Ltd., . . ."

4. Gotaas-Larsen and Emerald submit that (a) the pending arbitration proceedings are not governed by any stay order currently in effect in the bankruptcy proceedings involving Himoff Maritime Enterprises Ltd.; and (b) alternatively, the trustee in bankruptcy of Himoff should, by express provision of this Court's order, be given notice of the pending arbitration; so that he may participate on behalf of the bankrupt in such proceedings. A memorandum of law in support of these contentions is submitted herewith. We set forth below the factual background against which such contentions are made.

5. The complaint in the captioned suit, demanding consolidated arbitration, is dated March 26, 1975. An amendment to the complaint is dated March 28. The pleadings were filed on or about those dates. The answer and cross-claim of Himoff Maritime Enterprises, Ltd., which among other things demanded arbitration against defendant Mardoff Peach, Ltd., was dated May 22, 1975, and filed on or about that date. Pursuant to direction of this Court, counsel for Himoff addressed a further letter to Mardoff Peach, dated August 7, 1975, demanding arbitration (Exhibit 1 to Campise affidavit verified September 12, 1975). Consequently, during August of 1975 a consolidated arbitration, involving all parties to this litigation, had been demanded.

6. An involuntary petition in bankruptcy was filed against Himoff Maritime Enterprises, Ltd. in this

Court on September 18, 1975 (Docket No. 75 B 1641). Himoff filed a petition under Chapter XI of the Bankruptcy Act on September 26 (Docket No. 75 B 1697). Himoff was adjudicated a bankrupt by order dated January 8, 1976. That same order appointed Mr. Lewis Kruger of 41 East 42nd Street, New York, NY 10017 as Trustee. Mr. Kruger filed his Trustee's bond on the same day.

7. The legal consequences of these facts are set forth in the accompanying memorandum. In the light of these facts, and the underlying legal principles, deponent respectfully urges that the Court enter an Order in the form attached to this affidavit and marked "Exhibit 1." An alternative form of Order is attached as "Exhibit 2".

Sworn to before me
this 13th day of January, 1976.

Notary Public

MARGARET E. DILLEMUTH
Notary Public, State of New York
No. 41-0959500
Qualified in Queens County
Cert. filed with New York Co. Clerk
Term Expires March 30, 1977

Exhibit 1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC.,	:	
Plaintiff,	:	75 Civ. 1549 HFW
- against -	:	ORDER
GOTAAS-LARSEN A/S, EMERALD SHIPPING CORPORATION, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH LTD.,	:	
Defendants.	:	

Plaintiff Tramp Shipping Co., Inc. having moved this Court for an order directing the manner in which the consolidated arbitration herein is to proceed, and the Court being fully advised in the premises; it is now

ORDERED that the plaintiff and all defendants named above proceed to the arbitration of all claims, counterclaims and cross-claims asserted in their pleadings in this action; and it is further

ORDERED that the said parties shall proceed to choose a panel of arbitrators in accordance with the provisions of the stipulation entered into by plaintiff Tramp Shipping Co., Inc., and defendants Gotaas-Larsen, A/S, Emerald Shipping Corporation, and Sanko Steamship Co., Ltd., which Stipulation is attached as an exhibit to the affidavit of John C. Mamoulakis sworn to on December 29, 1975.

Dated: New York, NY

January , 1976

U. S. D. J.

Exhibit 2

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC.,	:	75 Civ. 1549 HFW
Plaintiff,	:	
- against -	:	ORDER
GOTAAS-LARSEN A/S, EMERALD SHIPPING CORPORATION, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH LTD.,	:	
Defendants.	:	

Plaintiff Tramp Shipping Co., Inc. having moved this Court for an order directing the manner in which the consolidated arbitration herein is to proceed, and the Court being fully advised in the premises; it is now

ORDERED that the plaintiff and all defendants named above proceed to the arbitration of all claims, counterclaims and cross-claims asserted in their pleadings in this action; and it is further

ORDERED that the said parties shall proceed to choose a panel of arbitrators in accordance with the provisions of the stipulation entered into by plaintiff Tramp Shipping Co., Inc., and defendants Gotaas-Larsen, A/S, Emerald Shipping Corporation, and Sanko Steamship Co., Ltd., which stipulation is attached as an exhibit to the affidavit of John C. Mamoulakis sworn to on December 29, 1975; and it is further

ORDERED that counsel for plaintiff herein deliver, by hand, a copy of this Order forthwith to Mr. Lewis Kruger, trustee in bankruptcy of defendant Himoff Maritime Enterprises, Ltd., at his office at 41 East 42nd Street, New York, NY 10017, with the request that Mr. Kruger give immediate consideration

to participation in these consolidated arbitration proceedings on behalf of the said defendant; and it is further

ORDERED that commencement of the procedures to choose a panel of arbitrators, as set forth in the second decretal paragraph of this Order, be deferred for a period of twenty (20) days following delivery of a copy of this Order upon Mr. Kruger, in order that his response or lack of response may be determined;and it is further

ORDERED that if the said trustee declines to participate in these consolidated arbitration proceedings, then the arbitration will proceed but the arbitrators shall not consider or make any award as to any claims against Himoff Maritime Enterprises, Ltd.

Dated: New York, New York

January , 1976

U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., LTD.,

Plaintiff,

-against-

GOTAAS-LARSEN A/S, EMERALD SHIPPING CORPORATION, SANKO STEAMSHIP CO., LTD. PARABOLA SHIPPING U.K., LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH, LTD.,

Defendants.

75 CIV 1549 HFW

AFFIDAVIT

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

I, PHILIP J. CURTIN, being duly sworn deposes and say:

1. I am a member of the firm of ZOCK, PETRIE, REID & CURTIN, attorneys for defendant, THE SANKO STEAMSHIP CO. LTD., ("Sanko") and I make this affidavit in reply to the motion of the plaintiff, TRAMP SHIPPING CO., INC., for an order directing the parties in this action to proceed to a consolidated arbitration, in accordance with the terms set forth in the order submitted by the plaintiff on this motion.

2. With respect to the plaintiff's motion, Sanko, supports same, but as defendants, Gotaas-Larsen A/S and Emerald Shipping Corporation, suggest that the order that is entered be in one of the forms submitted as Exhibits 1 and 2 to the affidavit of Charles S. Haight Jr., sworn to on January 13, 1976.

3. The papers of defendant Mardoff Peach, Ltd. ("Mardoff") submitted in opposition to the plaintiff's motion, seek to avoid consolidation on two (2) grounds. The first is that the effect of the Bankruptcy Act and Rules bars further arbitration proceedings against the bankrupt, Himoff Maritime Enterprises, Ltd. ("Himoff"). The second ground advanced by Mardoff Peach is that there is no "written agreement" to arbitrate between Himoff and Parabola Shipping U.K. Ltd. ("Parabola"), because the charter between Himoff and Parabola is "oral".

4. Assuming for the moment that either one or both of these grounds can be validly asserted by Himoff to stay arbitration proceedings against it, the only person who has standing to raise these points is the Trustee. Certainly, Mardoff Peach cannot arrogate unto itself the rights and duties of the Trustee.

WHEREFORE, the defendant Sanko, respectively requests that the plaintiff's motion be granted, and that an order of consolidation be entered in one of the forms submitted as Exhibits 1 and 2 to Mr. Haight's affidavit.

PHILIP J. CURTIN

Sworn to before me this
9th day of February, 1976.

Josephine F. Barrett

JOSEPHINE F. BARRETT
Notary Public, State of New York
No. 03-5175120
Qualified in Bronx County
Certificate filed in New York County
Commission Expires March 30, 1976

TO: POLES, TUBLIN, PATESTIDES & STRATAKIS
46 Trinity Place
New York, N. Y. 10006

KIRLIN, CAMPBELL & KEATING
120 Broadway
New York, N. Y. 10005

VINCENT, BERG, RUSSO,
MARCIGLIANO & ZAWACKI
127 John Street
New York, N. Y. 10038

HAIGHT, GARDNER, POOR & HAVENS
1 State Street Plaza
New York, N. Y. 10004

75-0511

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC., Plaintiff, -against- GOTAAS-LARSEN A/S; EMERALD SHIPPING CORPORATION; SACHO STEAMSHIP CO., LTD.; PARABOLA SHIPPING U.K., LTD.; and MARDOFF PEACH, LTD., Defendants.	75 Civ. 1540 (HFW) AFFIDAVIT IN OPPOSITION TO PLAINTIFF'S MOTION

STATE OF NEW YORK)
) Ss.:
COUNTY OF NEW YORK)

JAMES F. CAMPISE, being duly sworn, deposes and says that he is an attorney at law associated with the firm of VINCENT, BERG, RUSSO, MARCIGLIANO & ZAVACKI, attorneys for defendants Parabola Shipping U.K., Ltd. ("Parabola") and Himoff Maritime Enterprises, Ltd. ("Himoff") and as such is fully familiar with the proceedings and pleadings heretofore had herein.

Parabola and Himoff are prepared to proceed to the consolidated arbitration ordered by the Honorable Henry F. Werker as in his Order of August 4, 1975, as long as Mardoff Peach, Ltd. ("Mardoff") be mandated a party to such arbitration.

Furthermore, the method of selecting arbitrators, as it appears in the annexed Exhibit "A," is satisfactory to defendants Parabola and Himoff, again upon the condition that Mardoff be compelled to submit to such arbitration.

On August 4, 1975, this Court directed the parties to submit to consolidated arbitration. Again, on October 16, 1975, this Court denied Mardoff's Motion to Dismiss and ordered Mardoff to take part in the consolidated arbitration of the claims in this case. Mardoff has taken a protective appeal from this memorandum decision pending the settlement of the Order.

Parabola and Himoff are ready, willing, and able to submit to arbitration by the method designated as long as Mardoff is compelled to participate or, alternatively, Parabola and Himoff ask this Court to stay all proceedings pending final determination of the Mardoff appeal.

Para. 21 of the Cohen Affidavit in Opposition to Plaintiff's Motion states as follows: "...there has been no showing of any demand for arbitration by Parabola against Himoff..." It is respectfully submitted that Mardoff lacks the requisite standing to assert this in defense, even if the allegation were true. Furthermore, on Page 10 of Mardoff's Memorandum of Law, Chatham S.H. Co. v. Fertex S.S. Co., 1965 A.M.C. 1449 (S.D.N.Y.), aff'd. 1965 A.M.C. 2437, is cited for the proposition that libel in personam may not be combined with a request for arbitration. This argument is moot, since Mardoff was served with a Demand for Arbitration on August 7, 1975. Additionally, a copy of this demand was sent to Mardoff's counsel and submitted to this Court during oral argument on August 15, 1975. On that date and on October 16, 1975, the Honorable Henry F. Werker found that this Demand was sufficient to compel Mardoff to submit to arbitration as provided in the Charter Party agreements dated September 13, 1974.

The absence of Mardoff would render, consolidated arbitration of this matter meaningless as Mardoff was the only charterer in possession of the allegedly damaged vessel.

WHEREFORE, defendants Parabola and Himoff respectfully request that Mardoff be compelled to submit to the consolidated arbitration or, in the alternative, that all proceedings herein be stayed pending final determination of their appeal.

Dated: New York, New York
February 9, 1976

/s/
JAMES F. CAMPISE

Sworn to before me this
9th day of February, 1976

JOHN L. GOOSE
Notary Public, State of New York
No. [illegible]
Qualified in [illegible] County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------X

TRAMP SHIPPING CO., INC.,

Plaintiff,

-against-

GOTAAS LARSEN A.S., THE SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDOFF PEACH & CO. LTD.,

Defendants.

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STIPULATION

75 Civ. 1549 (HFW)

The undersigned parties to the above-entitled action hereby stipulate and agree:

1. All claim, counterclaims and cross-claims asserted by the parties hereto in their pleadings in this action shall be submitted to a joint arbitration in New York before three arbitrators who shall be chosen as follows:

2. A first list (List A) shall be drawn up which shall be composed of the names of the members of the Society of Maritime Arbitrators of New York, and of the names of such other persons as any of the patties hereto may add, provided that all names added shall be commercial men conversant with shipping. Any party may add any number of names it wishes.

3. All names to be included in List A shall be mailed or delivered to the offices of the attorneys for the plaintiff no later than ten (10) days after the date hereof. The attorneys for plaintiff shall compile List A from the names thus submitted or added by themselves.

4. Copies of List A shall then immediately be

forwarded by the attorneys for the plaintiff to the attorneys for the parties hereto. Each party shall strike from the list the name(s) of any person(s) whom it considers unacceptable as arbitrators. Not later than ten (10) days after receipt by the attorneys for the parties of copies of List A, the attorneys for all parties shall meet for the purpose of (a) disclosing to each other the name(s) of any person(s) whom any party has considered unacceptable as an arbitrator; and (b) in order to agree, if possible, upon three persons, acceptable to all parties, who will constitute the arbitration panel. At the same time attorneys for all parties will agree, if possible, upon three substitute arbitrators, in order of preference, in the event that any of the three arbitrators intiially designated may be unable to serve.

5. Following the selection of the three initial arbitrators, and the three substitute arbitrators, in the manner provided in the preceding paragraph of this stipulation, the attorneys for all parties shall address a joint written communication to the threeinitial arbitrators so selected inquiring as to whether those arbitrators are willing to serve. In the event of the refusal of any of the three initial arbitrators to serve, counsel for the parties shall address a comparable joint written communication to the substitute arbitrators, in the order of indicated preference, inquiring as to the willingness of such individuals to serve. In the event that a panel of three arbitrators is not achieved as the result of these inquiries, then the attorneys for the parties will meet again promptly in order to attempt to select additional substitute arbitrators, whose avail-

ability to serve will then be inquired into in the manner provided above.

6. If, following the consultations referred to in the preceding paragraphs of this Stipulation, the attorneys for the parties shall fail to agree as to any or as to one or two of the arbitrators, then the panel shall be selected or completed by submitting forthwith a list of those individuals designated as acceptable to all parties to The Honorable Henry F. Werker, United States District Judge, with a prayer that he complete the panel from the persons so designated.

7. All parties hereto and their attorneys agree that the process of selection as described above shall be carried on confidentially. No person shall discuss the lists or the attorney's comments or action with respect to the proposed names with any other person at any time before or after the arbitration.

8. This stipulation shall be submitted to the United States District Court in order to be made an order of the Court. When it is so ordered by the Court then this order shall supersede the order of the Court in this case entered 6th August 1975, or any subsequent order, in so far as said orders may be inconsistent herewith.

POLES, TUBLIN, PATESTIDES & STRATAKIS

By: _____
Attorneys for TRAMP SHIPPING CO., I

HAIGHT, GARDNER, POOR & HAVENS

BY: _____
Attorneys for GOTAAS LARSEN A.S. an
EMERALD SHIPPING

ZOCK, PETRIE, REID, CURTIN & BYRNES

BY: _____
Attorneys for THE SANKO STEAMSHIP C
LTD.

VINCENT, BERG, RUSSO,
MARCIGLIANO & ZAWACKI

BY: _____
Attorneys for PARABOLA
SHIPPING UK LTD. and HIMOFF
MARITIME ENTERPRISES, LTD.

bbe

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

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TRAMP SHIPPING CO., :

Plaintiff, :

-against- : 75 Civ. 1549

GOTAAS-LARSEN, et al., :

Defendants. :

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February 23, 1976
10:20 a.m.

BEFORE:

HON. HENRY F. WERKER,

District Judge

APPEARANCES:

PHILLIP CORTIN, ESQ.
RICHARD JARASHOW, ESQ.
CHARLES H. HAIGHT, JR., ESQ.
JOHN MAMOULAKIS, ESQ.
LAWRENCE G. COHEN, ESQ.

LEWIS KRUGER, Trustee in
Bankruptcy, Himoff

THE COURT: Let's go.

MR. MAMOULAKIS: Your Honor, the plaintiff brought this motion for an order in two parts.

The first part of the order was to sever the claims against Himoff because of Himoff's bankruptcy. We felt that our arbitration was complicated enough, and the proceedings lengthy enough so far and to be involved in the bankruptcy of Himoff would unduly lengthen it, but in view of the affidavit of Himoff's attorneys, I think that that part of the motion has become moot.

I assume that Mr. Campisi's affidavit of February 9 was made pursuant to authority from Himoff's trustees, and in that affidavit Mr. Campisi indicated that he would, that Himoff would be willing to take full part in the consolidated arbitration provided that all parties are joined in.

The second part of the order, your Honor, was for -- our second part of the motion was for an order to approve the stipulation concerning the panel, and the manner in which it would be selected, which all parties had joined except for Mardorf Peach.

This stipulation, your Honor, which came as a result of discussions we have had during an appeal, during the process of an appeal with the staff counsel of the

Second Circuit Court of Appeals, is meant to avoid the necessity of one of the appeals of the plaintiff, and is so agreed that these provisions are such that the members of the panel of arbitration, each one of them, would be appointed with the approval of every single party that is going to take part in the arbitration.

Unless they are going to be appointed on behalf of all the parties so that they don't feel that they represent anybody on the panel. In short, it is a panel that's as close as we can possibly get to fairness to all the parties, and we really don't see why Mardorf Peach has so far refused to join in the stipulation.

The reason they have given to us is because at that time when it was made, their motion was still pending that they should be let out, that the proceeds should be quashed against them, and we trust, your Honor, we hope that you will approve this stipulation.

THE COURT: Mr. Campisi.

MR. CAMPISI: Your Honor, as your Honor is aware, there has been much confusion about the bankruptcy and the roles of each of the individual defendants, and I'm happy today that Mr. Kruger, the trustee in bankruptcy, is here to possibly help elucidate the status of the bankruptcy at this particular stage.

THE COURT: All right, Mr. Kruger.

MR. KRUGER: If I may, my name is Lewis Kruger. I am the trustee in bankruptcy of Himoff Maritime Enterprises, Limited. I am an attorney, I might add, admitted to practice before this Court. The status of the proceeding is this. I was designated as the trustee on January 7, 1976, and qualified, I think, on January 9.

On January 19, the firm that I retained as my counsel obtained a temporary restraining order and sought a preliminary injunction against the former principals of Himoff Maritime Enterprises, Inc. alleging in part that substantial amounts of the assets of the bankrupt be transferred by the officers of the bankrupt to numbered Swiss bank accounts.

In addition, my counsel has taken the position that Himoff Maritime Enterprises, which operated with approximately 30 affiliated and subsidiary corporations, was really one enterprise and that the bankruptcy court should pierce the corporate veil and treat all of these entities as one.

We have been engaged in the trial of the preliminary injunction which has been merged essentially into the trial of the main issue for the past seven days before Bankruptcy Judge Babitt, and that trial is proceeding at

bbe 5

this moment before Judge Babbett.

The Himoff Maritime Enterprises, as a bankrupt, does not oppose the continuing arbitration of these proceedings because it is my understanding that the law of this District certainly is that an arbitration proceeding is not stayed by the Bankruptcy Act nor by the new Bankruptcy Rules.

With respect to Parabola, Himoff Maritime Enterprises, Limited was a 25 and one-half percent shareholder of Parabola. Apparently, that share ownership was sold sometime in the year 1975 to another group.

However, we have no records in the bankruptcy files indicating the nature of that sale, or whether consideration was paid therefore, or to whom the transaction occurred.

I cannot appear on behalf of Parabola, at least surely until Bankruptcy Judge Babitt, has determined whether or not I have an interest in an on-going basis in that company. But with respect to Himoff, I would appear before the Court and ask that the arbitration proceed.

THE COURT: All right, Mr. Cohen?

MR. COHEN: Thank you, your Honor.

We will address ourselves probably most immediately to Mr. Kruger's comments, and in order to introduce

us, we must say that this is the first time we have heard anything.

Mr. Campisi's affidavit we felt, carefully skirted the issue of trustee's consent. That seems to have been remedied somewhat this morning by Mr. Kruger's appearance.

We would, however, in light of the fact that Mr. Kruger has said that he does not represent, nor can he represent at this time, Parabola, perhaps address to him and to the Court, the question that appears uppermost in our mind, and that is that the complete lack of a charter party between Parabola and Himoff, and a complete lack of a written arbitration agreement, which is required under the Federal Arbitration Act between Parabola and Himoff, and to ask the trustee whether in view of this situation he is voluntarily consenting to subject Himoff to liabilities to the detriment of Himoff's creditors, which he's not obliged to undertake.

We are not sure, of course, what previous background Mr. Kruger's been informed of with regard to these proceedings, if any, and we would certainly think that it would be appropriate for Mr. Kruger if he has not been, to be fully briefed on the complete history of this case.

We feel that the relevancy of our making this

arrangement is that in consolidated arbitration proceedings, as we have outlined in our brief, a break in the chain of charters would be fatal to the theory of consolidation. However, in the interest of expediency I'm going to limit any oral remarks on that subject and refer you to the brief that we have submitted.

We would like to perhaps go in a little bit more carefully this time into some of the comments made in the reply affidavit and the answering affidavits and set the record straight on that area.

Now, with regard to the answering papers of Emerald and Gotaas and the responding papers of Emerald and Gotaas, the primary treatment of those papers we feel is adequately covered by our brief.

However, we would like to comment on the letter of February 11 sent by counsel for Gotaas and Emerald.

In that letter there were some dates that we believe were probably erroneous. Mardorf's papers in response to plaintiff's motion were submitted on January 16 to the Court, and Gotaas and Emerald's papers were received by us on January 14, which was both papers submitted after the dates that your Honor had set in his motion procedures.

We did not receive the letter that Himoff's counsel sent regarding the hearing date set for today until

February 4. That letter we thought stated that answering affidavits could be submitted on the new date, not responding affidavits for those parties that had not submitted any answering affidavits to plaintiff's motion, not to responding papers.

THE COURT: With all due respect, I would prefer to remain with the merits of this matter rather than with these procedural points, really.

MR. COHEN: Getting on to the merits, Gotaas and Emerald appear in their affidavit to accuse Mardorf of asking for a rehearing of certain issues that they state were decided by this Court.

In response to that we state that in effect Plaintiffs have asked for a rehearing by means of this motion in an attempt to circumvent the decisions rendered by this Court on August 4 and August 16 regarding the composition of a panel which in fact plaintiffs have on appeal, and we noted that Gotaas and Emerald, for what we feel are obvious reasons, did not make this fact clear in their affidavit.

We would like to point that out. In part 4 of the Gotaas and Emerald's responding affidavit, counsel appeared to accuse Mardorf of an inconsistent position with respect to the existence of a charter between Parabola and

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Himoff. We do not feel that Mardorf's position is inconsistent in this respect. A close reading of paragraph 18 of my affidavit shows that I stated that one of the legal issues was an existence of a charter, an oral charter, between Parabola and Himoff, one of the issues, and I don't believe that there is a concession of charter by my statement that there is an issue of oral charter.

Now, with respect to the Sanko Steamship Company affidavit, which is actually in response to our papers, we think Sanko in some way have an anomalous position in that they challenge our standing to raise the issues concerning Himoff's bankruptcy.

We feel that whether Mardorf Peach argued the standing issue with regard to Gotaas and Emerald, Sanko did not feel that it was necessary to either challenge or even raise the question of standing, and in fact, Mr. Cortin, Sanko's counsel, on August 7, I'm sorry, on August 15, supported Mr. Haight's arrangements in favor of standing stating, and I quote "All parties are entitled to be heard on issues put forth."

Now, the trustee's issues standing with regard to the bankruptcy I think by Mr. Kruger's appearance, have been somewaht covered. However, in Mr. Campisi's affidavit he makes a comment on a case cited in our brief, the Pertex

case, which states that requests for arbitration to compel arbitration, cannot be combined about liables in personam. We feel that the jurisdiction, the basis of jurisdiction in the Court's decision regarding Mardorf Peach was based upon the cross claim of Himoff, which was a liable in personam, and therefore we must take exception to Mr. Campisi's comments.

In one final remark I would just like to point out to the Court that in the case of Johnson versus England, 356 Fed. 2d. 44, 9th Circuit case in 1966, was a dealing in a suit to compel arbitration under a labor contract. One of the parties was a bankrupt party.

Now, the receiver had been appointed for that bankrupt, and an order enjoining suits against the bankrupt had been issued.

Now, the Ninth Circuit sustained a decision by the District Court staying the suit to compel arbitration on the grounds, and I quote, "A decision of an abritrator here would involve interests of parties who never consented to arbitration; namely, the trustee in bankruptcy and the general creditors. They ought not to be bound by the decision of an arbitrator selected by the employer or the Union. The issues here are within the special competence of a bankruptcy court. Furthermore, if appellants had their

way, and arbitrators were put in a position to decide, and did decide that the $158,000 were trust funds, or that appellant should be allowed preference, such a decision would not be subject to full judicial review in any Court citing a case."

That ought not to happen to these general creditors. We feel that the same principles are applicable in this situation, not only to Mardorf, but in addition to the creditors of Himoff.

Thank you, your Honor.

MR. KRUGER: Your Honor, if I may, I recognize the issue as to whether or not there has been an agreement by Himoff to accept an arbitration in connection with this matter, and it is my understanding that if Parabola is a part of Himoff, then I apparently had done that.

Obviously that is a decision that bankruptcy Judge Babbett will make in the course of the next several weeks. I would suggest perhaps it may be appropriate since that appears to be the nub of the arrangement advanced by counsel for Mardorf Peach that perhaps we await with your Honor's permission, the outcome of the trial before Judge Babbett and his decision on that very issue because surely if Parabola is not an asset or owned by or a part of Himoff Maritime Enterprises, the bankrupt, then I would not be

appearing on behalf of Parabola, and there might be a break in the charters that go through these various individual defendants, and perhaps we should await that decision before deciding the issue before your Honor.

THE COURT: All right, Mr. Haight.

MR. HAIGHT: It does seem to me, your Honor, that it is now appropriate for this Court to enter the final definitive order of consolidation so that we can get ahead with the merits of the case and begin to find out just what it was that happened in the Port of Churchill several years ago.

I don't think any further delay is necessary, and I recommend to the Court the stipulation for a joint arbitration panel which was worked upon by counsel following the meeting with the Court of Appeals, and which as Mr. Mamoulakis just said, has some excellent features to it.

It is a three-man panel. It is going to be a panel which to the maximum degree possible will be a panel on consent of all the parties, and while not every party agreed to that stipulation, Mardorf Peach preferring to stay out of it, I see no reason why it cannot be used by the Court as the basis for its own order. I think we can go ahead now at this time in this manner. It seems to me that the Himoff bankruptcy, which was suggested by Mardorf Peach as

an event which cut all kinds of chains and brought everything to a screeching halt, has been cured by the appearance, the very helpful appearance, of Mr. Kruger as trustee, expressing his willingness on behalf of Himoff for which he is trustee to participate in the arbitration proceedings. If Parabola is not a bankrupt, and is not in the bankruptcy proceedings, then obviously those proceedings have no effect upon Parabola.

Mr. Campisi says in his affidavits that he represents both Parabola and Himoff. I see no reason to doubt that, and it seems to me that on the present state of the record there just isn't any inhibition on these consolidated proceedings arising out of the Himoff bankruptcy. Mr. Kruger is prepared to go ahead on behalf of Himoff, and Mr. Campisi represents Parabola. As far as the oral nature of the charter between Parabola and Himoff is concerned, it can make no difference as far as the Court's power to direct consolidated arbitration is concerned. It has also seemed to us that the key factor is that Mardorf Peach agreed to arbitrate charter party disputes involving this development in New York. That being so, the Court has the discretionary power to direct Mardorf Peach to enter into a consolidated arbitration with anyone else who is involved with the ship and agreed to arbitration.

The fact that the Parabola-Himoff charter was oral makes no difference. It makes a difference only if one of them didn't want to arbitrate with the other. You have got to have a written arbitration agreement to compel arbitration, but it is oral and they are prepared to arbitrate with each other, and that's all that's required, and finally, even on the question of liability, there need not be an unbroken chain of privity.

Your Honor has already observed, citing the Paragon case, that in this Circuit the claim of absence of privity between Mardorf and other sub-charters is controlled by Paragon Oil and resolved against Mardorf. so even in the field of liability there need not be an absolute unbroken chain and privity between all parties, and if that is true, as a matter of substantive law, then certainly it would seem to control the procedural aspects of the consolidation.

I submit, therefore, that it is now time to go ahead and enter an order on the basis of the prior stipulation.

MR. CORTIN: Your Honor, I adopt the remarks of Mr. Haight. I would add one point.

Long before the Himoff bankruptcy Parabola admitted the power of this Court to order a consolidation of

arbitration, and admitted further that it was party to a charter with Himoff.

THE COURT: Yes.

MR. CAMPISI: Your Honor, one other point.

In view of the information which Mr. Kruger has presented today, we do find ourselves in a confusing position as far as the relationship of Parabola and Himoff.

The fact that the bankruptcy judge will decide whether in fact these are separate entities or not, puts us in a possible conflict situation which we are still unable at this point to resolve. We don't know exactly what the status of the two corporations are, and we were hoping that the information would be available prior to this day. However, as Mr. Kruger just informed the Court, this is something for the bankruptcy judge to decide, and while we are in theory in agreement with the arbitration proceedings, and we feel that this would be the time to go ahead, we find ourselves in the position that we are not at this juncture -- we don't think that it would be timely at this point to proceed until the bankruptcy court does definitively state the relationship of the Parabola and Himoff Corporations.

MR. MAMOULAKIS: May I, your Honor.

THE COURT: Yes.

MR. MAMOULAKIS: Your Honor, I don't think that the question of Parabola that has just been raised is relevant here. It has already been shown in the proceedings that Parabola has a charter party with, I think it is, the Sanko in which they have agreed to arbitration proceedings here in New York. Therefore, the question whether Parabola should be a party to these proceedings, to these consolidation proceedings, has already been decided. There is no question as far as Parabola is concerned. As far as Himoff is concerned, the question of whether Himoff should, now that it is a bankrupt, should be part of the consolidation proceedings, it seems to me with Mr. Kruger's appearance here and his consent and Mr. Campisi's affidavit, that question has been resolved here.

We are against any further delay in this matter. If and when Judge Babitt decides the question of Parabola, they may want to replace you as attorney, and they may decide they have different interests, but that decision will --

THE COURT: It has nothing to do with Parabola's status in this matter.

MR. MAMOULAKIS: Exactly, your Honor. That's my point.

MR. KRUGER: The charter does have something to

do with Himoff's status in this matter in the sense that at the representation by Mr. Campisi and my consent to go ahead with an arbitration is based upon my belief that we are dealing with one enterprise. If Bankruptcy Judge Babitt finds that that is not the fact, and they are in fact separate enterprises, and there is no agreement between Himoff under which we would be bound to arbitrate that matter, then I would not be willing to arbitrate this matter.

THE COURT: I'm afraid that issue has also been decided earlier on. I'm going to grant your motions, both of them, without opinion. Submit an order.

(Adjourned.)

* * * * * * * * *

Mr. Sexton

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

DISTRICT COURT FILED S.D.OF N.Y.

TRAMP SHIPPING CO., INC.,

Plaintiff,

-against-

GOTAAS-LARSEN A/S, EMERALD SHIPPING CORPORATION, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDORF PEACH & CO., LTD.,

Defendants.

75 Civ. 1549 HFW

ORDER

RECEIVED IN CHAMBERS OF JUDGE HENRY F. WERKER MAR 1 1976

Plaintiff, TRAMP SHIPPING CO., INC., having moved this Court for an Order directing the manner in which the consolidated arbitration herein is to proceed, and the Court having heard the parties and Lewis Kruger, Esquire, Trustee In Bankruptcy of Defendant, HIMOFF MARITIME ENTERPRISES, LTD., on February 23, 1976, and being fully advised in the premises; it is now

ORDERED, that the plaintiff and all defendants named above submit to a consolidated arbitration, all their claims, counterclaims and cross-claims which have been asserted in the pleadings in this action arising under the series of charter parties referred to in those pleadings; and it is further

ORDERED, that all the said parties proceed to choose a panel of three arbitrators for the consolidated arbitration in accordance with the provisions of the stipulation entered into by plaintiff and defendants, GOTAAS LARSEN A/S, EMERALD SHIPPING CORPORATION, and THE SANKO STEAMSHIP CO., LTD., which stipulation is attached as an exhibit to the affidavit of John C. Manoulakis, sworn to on December 29, 1975: provided however, that the provisions of paragraph 3 of the said stipulation are hereby amended to this extent, that all names to be included in List A shall be mailed and delivered to the offices of the attorneys for the plaintiff no later than 15 days after the date of this Order; and it is further

ORDERED, that this action is stayed pending arbitration, provided however, that this Court shall retain jurisdiction of these proceedings for the purpose of any subsequent proceedings that may be appropriate under the Federal Arbitration Act, Title 9 U.S.C. §1 et seq and it is further

ORDERED that this case shall be placed on the suspense docket until a motion is made to confirm the arbitrator's award.

Dated: New York, New York
March 15th 1976

Henry Werker
U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAMP SHIPPING CO., INC.,

Plaintiff,

-against-

GOTAAS-LARSEN A/S, EMERALD SHIPPING CORPORATION, SANKO STEAMSHIP CO., LTD., PARABOLA SHIPPING UK LTD., HIMOFF MARITIME ENTERPRISES, LTD., MARDORF PEACH & CO., LTD.,

Defendants.

NOTICE OF SUPPLEMENTAL APPEAL BY MARDORF PEACH & CO., LTD., FROM "ORDER" FILED MARCH 9, 1976

75 Civ. 1549 (HFW)

S I R S :

NOTICE is hereby given that Mardorf Peach & Co., Ltd., supplementing its precautionary appeal heretofore taken from the "So Ordered" memorandum decision of the Honorable Henry F. Werker (75-7656) hereby appeals to the United States Court of Appeals for the Second Circuit from so much of the "Order" of the Honorable Henry F. Werker, United States District Judge, entered and filed March 9, 1976 in the United States District Court for the Southern District of New York, as directs the said Mardorf Peach & Co., Ltd., (hereinafter "Mardorf"), to participate in a consolidated arbitration with the plaintiff and the other named defendants, notwithstanding the absence of any existing arbitration to which Mardorf is a party and the absence of any proceeding against Mardorf by an aggrieved party to compel arbitration in the manner provided in an agreement for arbitration pursuant to Title 9 of the United States Code, and the further absence of jurisdiction obtained and a determination made in such Title 9 proceeding.

Dated: New York, New York
April 7, 1976.

KIRLIN, CAMPBELL & KEATING

By _____
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